Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

JOSEPH P. GALLUZZI,

Petitioner,

v

UNITED STATES OF AMERICA,

Respondents,

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

Dennis A. Durkin
Counsel of Record
David D.F. Lawrence
Christopher D. Adams
1120 Bloomfield Avenue
West Caldwell, NJ 07007
(973) 244-9969
Attorneys for Petitioner
Joseph P. Galluzzi

31pp

QUESTIONS PRESENTED

The issues for review on behalf of the petitioner, Joseph P. Galluzzi ("Galluzzi"), are as follows:

I. Whether the District Court and the Third Circuit utilized an improper standard of proof for upward adjustment given defendants advanced age and the profound effect of defendant's sentence?

II. Whether the Third Circuit disregarded precedental law in other circuits in applying a preponderance standard to Obstruction of Justice adjustments?

III. Whether the District Court erred in admitting documents into evidence without subjecting them to a relevance inquiry?

IV. Whether the District Court erred in failing to dismiss the indictment despite the prosecutorial misconduct of the United States Attorney during the grand jury proceeding?

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OPINIONS BELOW

The unpublished opinion and judgment of the Court of Appeals for the Third Circuit was entered on May 28, 1999. The order of that court is set out in Appendix, 1a. The judgment including sentencing of the United States District Court for the District of New Jersey is set out in the Appendix, 2a.

STATEMENT OF JURISDICTION

Defendant, Galluzzi, was indicted in October of 1996 and charged with mail fraud, bribery, deprivation of honest services and related charges. In January of 1997 a superceding indictment was filed which contained 26 counts was filed. In March and April of 1998, a trial was conducted before the Honorable William H. Walls, U.S.D.J. On April 24, 1998, Galluzzi was convicted of all counts of the superceding indictment.

On September 10, 1998, Judge Walls sentenced Galluzzi to a term of imprisonment of 90 months with a term of three years supervised release to follow thereafter.

On September 16, 1998, a Notice of Appeal was filed in compliance with Rule 10(a) of the Federal Rules of Appellate Procedure (285a).

On May 27, 1999, the United States Court of Appeals for the Third Circuit affirmed the conviction and sentence of the District Court. This petition is hereby timely filed. The Jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C.A. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES INVOLVED

Galluzzi was convicted at trial of mail fraud in violation of 18 U.S.C. §§ 1341,1343, which read in pertinent part:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises...for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon... §3141.

> Whoever having devised or intending to devise any scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, representatives or promises, transmits or causes to be transmitted by means or wire, radio, or television communication...§ 1343.

STATEMENT OF THE CASE

Counts 1 through 11 of the superceding indictment alleged that Galluzzi knowingly devised a scheme and artifice to defraud and obtain money and property from Essex County ("Essex" or "County"), the Township of Irvington

Essex and Irvington, and First Fidelity the right to honest services. (186a). In substance, these Counts alleged that Galluzzi caused a First Fidelity vice president to agree to pay kickbacks to Galluzzi without public awareness as a reward for directing county business to First Fidelity. These counts further allege that Galluzzi caused 11 documents to be transmitted through the United States Mail as a part of this scheme in violation of 18 U.S.C. §§§ 1341, 1343, 1346.

Counts 12 through 15 alleged that Galluzzi knowingly devised a similar scheme as above. Here, it was maintained by the Government that Galluzzi caused a First Fidelity vice president to agree to pay kickbacks to Galluzzi without public knowledge as a reward for directing Essex County municipal bond underwriting business to First Fidelity. (186a).

In Count 16, the Government alleged that Galluzzi designed another scheme wherein he intended to defraud A.G. Edwards, Essex, and the citizens therein. (186a). According to this scheme, Galluzzi allegedly caused an A.G. Edwards vice president to agree to pay kickbacks to Galluzzi as a reward for his efforts in directing municipal bond underwriting business to A.G. Edwards.

Improper Introduction of Documents

At trial, in an apparent attempt to streamline the trial, the Government introduced and the Court admitted the documents listed L-1 (a) and L-2 (a) without conducting an examination of relevancy mandated by FED. R. EVID. 401 (7a) and an evaluation of prejudice. Both L-1 (a) and L-2 (a) documents created by FBI agents purported to provide a listing of documents seized during various searches. At the time of introduction, and over defendant's objection, each document was introduced solely on the assertion that they

were seized from Appellant's place of business. The Government was not required by the court to make a proffer regarding any specific document. A majority of the documents were not the subject of testimony either. A majority of these documents were not referenced by any witnesses. As a result, the defendant's tax returns were admitted without any testimony simply because they were seized at defendant's office. Also, Financial Statements (Lodging p. 18), Spread Sheets (Lodging p. 21), draft letters (Lodging p. 23), meeting agendas (Lodging p. 27), were submitted to the jury, were made a part of the record, and were made available to the jury for deliberations, but were never the subject of proper court scrutiny.

Significantly, on rebuttal summation, the Government read from and commented about a document (SA-12) submitted en masse with others and without review. In this summation the government contended that the document was a draft resignation letter from Galluzzi to Nick Amato, a former Essex County Executive. The Court never discussed this document. There was no testimony authenticating it, identifying its author, or even as to whether it was a draft or for whom it was intended. The result was that the Government was able to use the document and impermissibly testify as to its meaning without any foundation whatsoever.

Improper use of SEC Civil Investigation

In the course of its-investigation and prosecution prior to indictment and thereafter, the United States Attorney's Office gained information and testimony from its joint civil and criminal investigation through the use of the SEC's subpoena power and the information gained was specifically

Witness after witness was deposed by the SEC and preserved for use at trial. This tactic was compounded when the Government refused to provide access to discovery materials, and testimony of important fact witnesses was withheld from defendant until the last days of trial. (151a-284a,).

Sentencing

At the Sentencing Hearing, Appellant's counsel urged the Court to employ a clear and convincing standard for departure from the Guidelines. (20a-21a). The court did not contest counsel's statement and the government made no assertion that the standard was anything but clear and convincing. (20a-21a). Despite this and despite the fact that the upward adjustment had a profound effect on defendant's sentence the District Court erroneously held the Government to a mere preponderance of the evidence standard.

The Court was urged to make an upward departure based on a valuation of loss, to which Defendant objected. In considering Galluzzi's objection to an upward adjustment based upon a $4.7 million dollar loss arising out of a 1989 $104 million dollar bond deal, the Court entertained conflicting testimony of two experts. Mark Egland testified for the Government; the other, Philip Ferrand was retained by Galluzzi.

Both individuals testified at length and both submitted various reports to the court. The court, however, chose to accept Mr. Egland's conclusions without any consideration of Mr. Ferrand's.

Mr. Egland simply stated that the bond deal was not a good deal because there was not an interest rate saving. Mr. Egland forwarded that opinion without knowledge concerning the restrictions on issuing of bonds that were placed by New Jersey law, without an understanding of the financial binds of Essex County, and without understanding the political realities of the County at the time of issuance. In fact, Mr. Egland made no effort and did not testify as to why the bonds were, or would have been issued.

Eventually, the court relied on an inexperienced, uninformed expert who concluded that bonds issued with the consent of the County Executive, the Board of Chosen Freeholders and the Local Finance Board were not the only solution to solve the counties economic woes. Mr. Egland's testimony simply ignored standard Accounting practices as promulgated by the Governmental Accounting Standards Board. Such ignorance compels the conclusion that his testimony is entirely without merit.

Conversely, Mr. Ferrand possessed a great deal of experience, specifically relating to municipal bond underwriting. (24a-25a). Ferrand testified that he, unlike Egland, has specifically served as a consultant to both financial advisors and managing underwriters in developing funding plans. (24a-25a).

Mr. Ferrand testified that Mr. Egland, in rendering his opinion, omitted 6.1 million dollars in benefits to the County. (40a). Mr. Ferrand also testified as to other benefits to the county, such as how the county benefited from the creation of a $25 million capital improvement fund. (67a-68a). Ferrand testified, in sum, that Egland omitted certain figures from his calculations.

The court, however, accepted the testimony of Government's expert stating that "I find that Mr. Egland's calculations more likely than not are acceptable." (118a).

Additionally, at sentencing the District Court erroneously utilized a preponderance standard when attributing to Galluzzi an upward adjustment for obstruction of justice. In affirming this decision the Third Circuit Court of Appeals is in conflict with rulings of other circuits and as such Supreme Court review is warranted.

CONTENTIONS IN SUPPORT OF THE PETITION FOR WRIT OF CERTORIARI

POINT I

THE TRIAL COURT IMPROPERLY ADJUSTED APPELLANT'S SENTENCE UPWARD AND THE MATTER SHOULD BE REMANDED FOR RESENTENCING.

It is respectfully submitted that the trial court clearly erred by imposing a preponderance standard and as such, upon a de novo review, the matter must be remanded for resentencing. It is also respectfully submitted that this Honorable Court has not presently addressed the issue of whether advance age of defendant should be a consideration in determining the effect of sentencing adjustment. As such the matter is ripe for review.

In so arguing the Appellant recognizes that the standard of proof in the Third Circuit for upward adjustments is generally preponderance of the evidence. *United States v. Kikumura*, 918 F. 2d. 1084 (3rd Cir. 1990). The appellant however urges that pursuant to *Kikumura,* the issue of the 4.7 million dollars loss to the county is so profound to the life

departure must be found by clear and convincing evidence. *See Kikumura*, 918 F. 2d at 1101; *See also United States v. Bertol*, 40 F.3d 1384 (3d Cir.1994); *United States v. St. Julian*, 922 F. 2d 563, 569 (n.1)(10th Cir. 1990) ("If the difference between the guidelines range and the departure sentence is great, the trial court should consider the implications of that disparity in determining the appropriate standard of proof for the facts considered in sentencing."). Simply put, because the application of this loss doubled Mr. Galluzzi's sentence, the District Court should not have applied it unless it was supported by clear and convincing evidence. It is critical to this review that the courts determination that an upward adjustment was warranted had a most profound effect on the defendant. Specifically, defendant Galluzzi was 66 years old at the time of sentencing. The application of this adjustment which transformed Galluzzi's sentence from 3 1/2 to 7 1/2 years is tantamount to a life sentence. The age of Galluzzi at time of sentencing mandates a higher standard of proof than preponderance of the evidence. It is submitted the issue of advanced age and its effect on loss calculation burden of proof has not been resolved by the circuits and as such Supreme Court review is warranted.

In addition it must be noted that the District Court who obviously confused as to what standard to apply. Appellant's counsel stated at sentencing that a clear and convincing standard should apply. (20a-21a). The court did not contest Counsel's statement and the government made no assertion that the standard was not clear and convincing. In rendering its opinion, however, the Court accepted the testimony of Government's expert stating that "I find that Mr. Egland's calculations more likely than not are acceptable ." It is submitted that the uncertainty of the court coupled with the tremendous affect the decision had on Appellant's

sentence mandate a de novo review resulting in clarification for the trial court as to the appropriate standard and remand for resentencing.

It is respectfully submitted that the application of a $4.7 million dollar loss for sentencing purposes was so clearly and obviously erroneous that in the interest of justice this Honorable Court must intervene. The court applied incorrect standard of proof, clearly misunderstood the testimony of the expert upon which its ruling was based and simply ignored the inadequacies of the Government expert. The result, which proved so significant in dramatically increasing plaintiff's sentence mandates this Court's intervention.

In considering defendant's objection to an upward adjustment based upon a $4.7 million dollar loss arising out of a 1989 $104 million dollar bond deal, the Court entertained conflicting testimony of two experts. The first, Mark Egland was retained by the Government; the other Philip Ferrand, was retained by Joseph Galluzzi. Both individuals were paid for their opinions and appearances.

Despite the fact that both individuals testified at length and both individuals submitted reports to the Court, the Court clearly demonstrated a bias in favor Mr. Egland and for no discernable reason chose to rubber stamp Mr. Egland's conclusions. In doing so, the Court ignored several aspects of Mr. Egland's testimony that clearly undermines his credibility and the merit of his conclusions. Among the things the court ignored included:

1. That Mr. Egland did not interview one person associated with the County of Essex;

2. That Mr. Egland did not interview one person who sat on the Local Finance Board; (52a-53a).

3. That Mr. Egland never spoke to anyone from First Fidelity; (54a-55a).

4. That Mr. Egland never spoke to anyone form the Local Finance Board; (148a-149a).

5. That Mr. Egland made no effort to determine for what purpose the relevant Bonds were being issued; (108a-109a).

6. That Mr. Egland discounted the tremendous cash flow problems the County was experiencing at the time of the referenced Bond issuance; (102a-103a)

7. That Mr. Egland was not familiar with several financial obligations imposed by government regulations; (104a-105a).

8. That Mr. Egland suggested in his testimony that to raise funds, the county could have mortgaged property that was owned; (106a). (In doing so, Mr. Egland was not aware New Jersey Law prohibits such a sale).

9. That Mr. Egland stated in his testimony that the County could have issued Tax Anticipation Notes ("TANs") as an alternative to the $104 million dollar Bond deal; (106a); (TANs are obligations issued in anticipation of tax revenues. Under New Jersey Law, referred to as Local Budget Law, N.J.S.A. 40A:4-64 et. seq., TANs can be renewed from time to time but "all such notes and any renewals thereof shall mature... in the case of counties not later than June 30th of the succeeding fiscal year. Consequently, the mere issuance of TANs could not have successfully resolved the cash flow deficit as the County would have needed to raise money in either the 1989 or 1990 budget to pay off such notes. Therefore, the issuance of TANs to solve this deficit is spurious because they can only be used for short term cash flow problem);

10. That Mr. Egland stated in his testimony that the County could have issued a smaller bond issue. (In his testimony and his analysis, Mr. Egland indicates the County could have floated a bond issue of approximately $5-$10 million to cover the deficit in operations. Under New Jersey Statutes, referred to as Local Bond Law (N.J.S.A. 40A:2-1 et. seq.), governmental entities are specifically prohibited from issuing bonds to cover operational costs. N.J.S.A. 40A:2-3 specifically indicates that a local unit can incur indebtedness for capital improvements or property, any purpose for which it is authorized or required by law to make an appropriation, except for current expenses and payment of obligation. Consequently, Mr. Egland's assertion that the County could have issued "a five or $10 million issue" is erroneous and could not be legally accomplished in 1989 or even under current statutes);

11. Mr. Egland made no attempt to determine whether State and Federal tax aid to Essex County had been eliminated causing financial problems; (108a-109a);

12. That the problems with the Bond issue identified by Mr. Egland were discussed by the Board of Chosen Freeholders prior to their agreement to going forward with the issue; (117a);

13. The fact that Mr. Egland relied upon a government exhibit CH-12 for his figures, which attributed to Galluzzi information provided not by Galluzzi but by the public finance department of First Fidelity Bank; (119a);

14. That Mr. Egland refused to opine as to political or public policy reasons that may have affected the decision to issue the bonds; (122a)

15. That Mr. Egland was not familiar with the laws of New Jersey concerning the issuance of bonds; (126a), and Mr. Egland failed to produce his work papers identifying his methods.

Each of the above clearly demonstrate at the very least that Mr. Egland's opinion was without merit. Mr. Egland simply stated that the bond deal was not a good deal because there was not an interest rate saving. Mr. Egland forwarded that opinion without knowledge concerning the restrictions on issuing of bonds that were placed by law. Mr. Egland forwarded that opinion without an understanding of the dire financial condition of Essex County. Mr. Egland forwarded the opinion without understanding the political realities of the County at the time of issuance. Finally, Mr. Egland did not even bother to determine why the bonds were issued.

In reality, the court relied on an inexperienced, uninformed expert who concluded that bonds issued with the consent of the County Executive, the Board of Chosen Freeholders and the Local Finance Board were not the only solution to solve the counties economic woes. The Court ignored the fact that the expert could point to no viable alternatives and that the alleged problems with the issue were known to the Board of Chosen Freeholders, were discussed and ultimately discounted.

In reaching its conclusion the Court entirely ignored the testimony of Mr. Fillip Ferrand who opined that the 104 million dollar bond deal benefited the county in an amount of approximately 2.7 million dollars. Mr. Ferrand reached this conclusion after carefully examining the bond issue as well as the bonds to be refunded. (39a). Mr. Ferrand testified in his capacity as an expert with tremendous amount of practical experience, and had participated in hundreds of similar deals. As opposed to Mr. Egland who had little or no practical experience having dealt with only 10 or 15 hundred related issues, Mr. Ferrand testified that he developed the software program relied upon by approximately 40% of the top 100

program relied upon by approximately 40% of the top 100 municipal bond underwriters. (24a-25a). Mr. Ferrand has specifically served as a consultant to both financial advisors and managing underwriters in developing funding plans totally tens of billions of dollars.

Specifically, Mr. Ferrand carefully detailed and documented that Mr. Egland, in rendering his opinion, omitted 6.1 million dollars in benefits to the County. (40a). Mr. Ferrand also pointed out benefits to the county in that the county benefited from the creation of a $25 million dollar capital improvement fund. (65a).

Despite this testimony and the carefully detailed report submitted to the court by Mr. Ferrand, the Court dismissed Mr. Ferrand's testimony out of hand. In attempting to justify its decision, the Court stated the following:

> Now, I reject Ferrand's analysis because frankly it doesn't even make, it doesn't make common sense. One doesn't have to be an astute mathematician which the court is not to use Ferrand's figures to calculate from his present value analysis summary that if we reduced other benefits to $700,000, there would be a loss of $2,723,236.26. So I don't understand how a loss becomes a positive. That's how I believe and I find that Mr. Egland's calculations more likely than not are acceptable. (118a).

Quite frankly, neither Mr. Egland nor Mr. Ferrand testified to a loss of approximately $2.7 million. As such, the Court was either confused or just arbitrarily dismissed Ferrand's calculations.

determined what effect if any the advanced age of defendant should have in relation to standard of proof issues. Additionally, and most importantly the issue of which standard of proof applies is critical due to the insufficient proofs submitted as well as the District Court's obvious confusion. Finally, the severity of the courts mistake and the injustice imposed upon Galluzzi mandate Supreme Court review.

POINT II

THE COURT ERRED IN CONCLUDING THAT AN UPWARD ADJUSTMENT FOR OBSTRUCTION OF JUSTICE WAS APPROPRIATE BECAUSE IT UTILIZED A PREPONDERANCE OF EVIDENCE STANDARD RATHER THAN CLEAR AND CONVINCING.

At time of sentencing, over the objection of the defendant, the Court concluded that an upward adjustment pursuant to U.S.S.G. § 3C1.1 was appropriate based upon defendant's testimony before the SEC. (115a). Specifically, the Court ruled that by a preponderance of the believable evidence, the defendant perjured himself. (115a-116a). In affirming the District Court's decision, the Third Circuit Court of Appeals has ruled in conflict with previous Third Circuit opinions as well as those of other circuits. Therefore, review by this Court is warranted.

For example, the Third Circuit has specifically stated that only in situations when clear and convincing evidence of perjury or obstruction of justice exist, is an upward adjustment pursuant to U.S.S.G. § 3 C1.1 lawful. *See United States v. Arnold,* 106 F. 3d 37 (3d Cir.1997); *see also United States v. Montaque,* 40 F.3d 1251 (D.C. Cir.1994) (District Court's upward adjustment reversed because finding was based upon preponderance of the evidence; clear and convincing standard applies); *United States v. Subin,* 56 F. 3d 1423 (D.C. Cir. 1995) (clear and convincing standard appropriate); *United States v. Gabriel*, 125 F.3d 89 (2d Cir. 1997).

The significance of this standard is clear due specifically to the fact that the court predicated its ruling on

Securities and Exchange Commission ("SEC"). The Court focused exclusively on statements that Galluzzi claimed to have performed for AG Edwards. The Court's conclusion that Galluzzi performed no work for A.G. Edwards is directly contradicted by the testimony before the SEC of Timothy McDonough, a former A.G. Edwards Vice President. Due to Mr. McDonough's unavailability at trial, his SEC testimony was read into the record. (199a). As a review makes clear, Mr. McDonough specifically supports Mr. Galluzzi's contention that he performed work for A.G. Edwards and was compensated as a result. The paucity of proof in this regard underscores the necessity for review. In erroneously applying a less stringent proof standard the District Court and Third Circuit have created an untenable position the result of which Galluzzi's sentence was increased based upon insufficient proof. As such, review is warranted. Such testimony, contradicting the court's conclusion mandates remand to the Court for consideration of this issue under the proper standard.

POINT III
DEFENDANT IS ENTITLED TO A NEW TRIAL BECAUSE THE COURT IMPROPERLY ADMITTED INTO EVIDENCE DOCUMENTS THAT WERE NOT SUBJECTED TO RELEVANCY INQUIRY.

The Third Circuit affirmed the District Court's decision to allow over objection of defense counsel the Government to introduce in excess of 100 documents in government exhibits L1 (a) and L2 (a). (See Lodging pp. 1-17). It was submitted that the admission of these documents was improper in that a vast majority of them were not the subject of further testimony and as such the Court was not able to assess the relevancy of the documents or the potential for substantial prejudice to the defendant. While the government may have represented to the court that additional testimony would be adduced establishing relevance, such testimony was not received.

In affirming the decision to admit such documents the Third Circuit is in conflict with established law in other circuits. For example, it is clear that if either side proffers for admission documentary evidence, it is incumbent upon the court to make a determination as to each document whether that particular piece of evidence is relevant. *See United States v. Schiff*, 612 F.2d 73 (2nd Cir. 1979). The determination as to relevance is to be determined by the trial judge and is not properly left to the jury. *See id.* at 80; *see also United States v. Williams*, 545 F.2d 47, 50 (8th Cir. 1976). In properly exercising its function, the Court is obligated to make a specific determination as to each piece of evidence offered, that "a reasonable man might have had his assessment of the probabilities of a material proposition changed by the piece of evidence sought to be admitted." *United States v. Schipani*, 289 F. Supp. 43 (E.D. N.Y. 1968),

922, 90 S. Ct. 902, 25 L.Ed. 2d 102 (1970). Only upon such a determination is a document properly admissible.

The procedure that was proposed by the Government and utilized in this case proved to be improper because while the government may have represented that relevancy testimony would be received as to each document listed in L1 (a) and L2 (a), that was not the case. As a result, a specific inquiry as to each document was not undertaken, and the determination of relevancy was improperly left to the jury.

Similarly, due to the procedure proposed by the Government, the court made no inquiry as to the prejudicial effect that each item might have had. FED. R. EVID. 403 mandates that even if a determination is made as to the relevancy of a particular item, the Court must also determine that the probative value of such evidence is substantially outweighed by the danger of introducing unfair prejudice, confusion of the issues, or misleading the jury. (7a).

In this instance the Court is charged with the duty to confront this issue "explicitly, acknowledging and weighing both the prejudice and the probative worth of the proffered testimony." *United States v. Dwyer*, 539 F.2d 924, 928 (2nd Cir. 1976).

It is true that appellate courts generally grant the trial courts broad discretion to determine whether evidence is relevant, and its decision will be reversed on appeal upon a showing of clear abuse of that discretion. *See Beachum v. Lee-Morse*, 714 F.2d 1010, 1014 (10th Cir. 1987). The same standard applies to a court's 403 determination. However, a District Court's decision does not need to be outlandish or malicious to rise to the status of clear abuse. Rather, the reviewing court need only be firmly convinced that a mistake

has been made. *See United States v. Hays*, 872 F.2d 582, 587 (5th Cir. 1989).

It is simply stated that in introducing the documents listed L-1 (a) and L-2 (a) without conducting an examination of relevancy mandated by FED. R. EVID. 401 and an evaluation of prejudice if relevancy is determined pursuant to Rule 403, the trial court made a reversible error. While conceding that many of the documents were referenced by other witnesses, a majority of them were not. The result was that documents which were never scrutinized by the Court and admitted over objection were available to the jury for their review. For example, the defendant's tax returns were admitted without any testimony simply because they were seized at defendant's office. There simply was and is no reason for defendant's personal tax returns to be available to the jury simply because they were located in defendant's office. Similarly, Financial Statements (Lodging p. 18), Spread Sheets (Lodging p. 21), draft letters (Lodging p. 23), meeting agendas (Lodging p. 27), are other examples of documentation made a part of the record, and made available to the jury for deliberations, but were never the subject of proper court scrutiny.

Of particular interest is the fact that in rebuttal summation, the Government read from and commented about a document (SA-12) that they purported was a draft resignation letter from defendant to Nick Amato, a former Essex County Executive. The Court never discussed this document. There was never testimony authenticating it, identifying its author, indicating whether it was a draft or for whom it was intended. The extent of the improper prejudice visited upon the defendant can not better be explained than by the fact that it was this document that A.U.S.A. Marra improperly utilized in his last remarks to the jury. The question must be asked upon

was this document attributed to the defendant and why did the government deem it so important that it was relied upon in rebuttal summation? Since the Court never asked these questions, Defendant Galluzzi was never entitled to contest the Government's assertions.

This failure to make a specific inquiry as to the relevance of each document, leaving that determination up to the jury is reversible error and as such, the conviction must be overturned.

POINT IV

THE UNITED STATES ATTORNEY'S OFFICE ENGAGED IN PROSECUTORIAL MISCONDUCT BEFORE THE GRAND JURY WHICH SHOULD HAVE RESULTED IN A DISMISSAL.

It is respectfully submitted that the Government's use of and consults with a SEC civil investigator so undermines the process involved here that this Honorable Court must intervene to insure that this defendant's rights are protected.

The Fifth Amendment to the United States Constitution provides that every person is afforded the right to due process and indictment only by action of a grand jury. It states in pertinent part:

> No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury... nor be deprived of life, liberty, or property, without due process of law...

U.S. CONST. AMEND. V. Prosecutors may abuse this process and thus commit actionable misconduct by using civil investigative powers to circumvent the appropriate grand jury proceedings. *See United States v. Smith*, 687 F.2d 147, 148 (6th Cir. 1982). Administrative inspection warrants used by a prosecutor to gather evidence for a criminal prosecution are clearly improper. *See United States v. Russo*, 517 F. Supp 83, 86 (E.D. Mich. 1981); *United States v. Lawson*, 502 F. Supp 158, 165 (D.Md. 1980). If the basic purpose of the warrant or subpoena is one related to civil proceedings and not to a criminal investigation, its use in a criminal investigation is an improper subterfuge and should be challenged by counsel. *See United States v. LaSalle Nat'l Bank*, 437 U.S. 298, 314 (1978); *SEC v. Gilbert*, 79 F.R.D. 683 (S.D.N.Y. 1978).

For example, in *United States v. LaSalle Nat'l Bank,* 437 U.S. 298, 98 S. Ct. 2357, 57 L.Ed.2d 221 (1978), the Supreme Court held, *inter alia*, that the Internal Revenue Service must use its summons authority in good faith when pursuing a civil/criminal investigation. *LaSalle* involved an IRS agent who was using summonses to obtain evidence for a criminal investigation. *See id.* The Court held that in order to demonstrate bad faith, a complainant has to show that the agency issued the summons for a purpose other than those authorized by Congress. *Id.* at 314.

The case of *SEC v. Gilbert*, and the case at hand are similar in many respects. For example, in *Gilbert*, the defendant requested a protective order to block disclosure of information to the U.S. Attorney from the SEC, under the discovery rules of the Federal Rules of Civil Procedure. *See* 79 F.R.D. at 684. The district court in *Gilbert* determined such disclosure would be improper, and it ordered the SEC "not to furnish the U.S. Attorney specially with any

Similarly, in *SEC v. Dresser Industries, Inc.*, 628 F.2d 1368 (D.C.Cir.) (*en banc), cert. denied,* 449 U.S. 993, 101 S. Ct. 529, 66 L.Ed.2d 289 (1980), a case which also involved SEC participation, the United States Court of Appeals for the District of Columbia held that a party under investigation must show either that his rights will be prejudiced or that the investigating agency is acting in bad faith or using malicious tactics. *See id.* Presently, defendant's Fifth Amendment rights were violated and the civil investigation was improperly used by the Government to indict the defendant and compounded by the referral of access to SEC documents relating to this matter.

The court in *Dresser,* however, failed to discuss or acknowledge the extreme prejudice involved in due process violations. Due process requires indictment solely through the grand jury process that is afforded its own broad subpoena power and tempered with procedural safeguards. For the United States Attorney's Office to use the subpoena or discovery power of an administrative agency is an example of clear circumvention of the grand jury indictment process and due process guarantees of the Fifth Amendment.

Defendant asserts that in this case, the United States Attorney's Office conducted a criminal investigation in conjunction with the civil investigation of the SEC in order to avoid the constitutional requirement that indictments be secured only through a grand jury. The Government repeatedly admitted at trial that it engaged in an investigation with the SEC in order to gain criminal discovery. It even argued during pretrial motions and during the trial to keep the testimony and information from that investigation away from the defense, classifying it as criminal discovery.

The criminal division of the United States Attorney's Office is restricted to conducting investigations before a grand jury. However, in this matter the United States Attorney's Office utilized the civil investigative power of the SEC to gain information to forward its criminal investigation. The real investigating body in issuing the SEC subpoenas was the United States Attorney's Office, which should have gotten its subpoenas from a grand jury.

Since the United States Attorney's Office was involved in the investigation and controlled the issuance of subpoenas, these subpoenas issued under the auspices of the SEC were improperly used for the sole and dominant purpose of obtaining discovery, which material testimony or information was used in obtaining an indictment and its criminal prosecution. The subpoenas, therefore, were used for an improper purpose.

The United States Attorney's Office gained information and testimony from its joint civil and criminal investigation through the use of the SEC's subpoena power and the information gained was specifically utilized in the Government's opening statement as well as throughout the trial. More importantly, defendant was denied access to any of the testimony or information gained by the SEC. This denial was first done by the Government and then by the Court itself when defendant's subpoena of the SEC testimony was quashed. (151a). When apprised of the extent of the inquiry conducted under the auspices of the SEC, defendant issued a subpoena to review the record. The Government opposed these subpoenas and they were quashed by the Court. (151a). Clearly from this circumstance, the Government as well as this Court deemed the discovery obtained through the SEC subpoena power as criminal discovery not available to the defendant.

Furthermore, the SEC testimony of important fact witnesses was withheld from defendant until the last days of trial, a situation that severely prejudiced the defendant in the preparation of his defense. It was only at this time that redacted copies of the SEC testimony of George Schneider, Timothy McDonough and Robert Brown were provided. No other information was provided. (151a-284a) These circumstances reinforce defendant's argument that the SEC, in issuing the subpoenas in this matter, was motivated by a criminal investigative purpose, and that the information gained through use of SEC subpoenas permitted the Government to improperly expand its criminal discovery rights in contravention of the guarantees of the Fifth Amendment.

The United States Attorney's Office must not be permitted to utilize civil enforcement powers in an investigation aimed at building or developing a criminal case. While cooperation between the United States Attorney's Office and executive agencies may be expected and even intended by Congress, there is no Congressional intent anywhere which justifies an interpretation or application that would expand the Justice Department's criminal discovery rights or allow due process violations, even potentially, by allowing the Justice Department to have an alternative to the role of the grand jury. The United States Attorney's Office must not be permitted to accomplish indirectly that which it is not permitted to do directly.

Consequently, and in light of the foregoing, the United States Attorney's Office committed actionable misconduct by using civil investigative powers to circumvent the appropriate grand jury proceedings. The misconduct rendered the proceeding against the defendant fundamentally unfair. As such, prejudice is presumed. Assuming, however, in the

alternative, that the misconduct has not rendered the proceeding fundamentally unfair, the misconduct has resulted in actual prejudice to the defendant. Accordingly, the indictment against the defendant should have been dismissed.

CONCLUSION

Wherefore, Petitioner respectfully prays that a writ of certiorari be granted.

DURKIN & DURKIN

By: _____
Dennis A. Durkin
ATTORNEY FOR PETITIONER
JOSEPH P.GALLUZZI
1120 Bloomfield Ave.
West Caldwell, NJ
(973) 244-9969

DATED: August 23, 1999

Supreme Court, U.S.
FILED
OCT 27 1999
OFFICE OF THE CLERK

(2)

99 734

No.

In the

Supreme Court of the United States

JOSEPH P. GALLUZZI,

Petitioner,

v

UNITED STATES OF AMERICA,

Respondents,

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

APPENDIX VOLUME I (PP. 1-284)

Dennis A. Durkin
Counsel of Record
David D.F. Lawrence
Christopher D. Adams
1120 Bloomfield Avenue
West Caldwell, NJ 07007
(973) 244-9969
Attorneys for Petitioner
Joseph P. Galluzzi

284 pp

US Court of Appeals for the Third Circuit

No. 98-6351

USA

v.

Joseph P. Galluzzi,

Appellant

On Appeal from the US District Court for the District of New Jersey (D.C. Criminal No. 96-cr-00640)

District Judge: Honorable William H. Walls

Argued Friday, May 21, 1999

Before: McKee, Rendell and Garth, Circuit Judges

Judgment

This cause came to be heard on the record from the US District Court for the District of New Jersey and was argued on May 21, 1999.

On consideration whereof, it is now here ADJUDGED and ORDERED by this court that the order of Judgment and Conviction of the District Court, filed September 18, 1998, affirming the convictio nand sentence of Joseph P. Galluzzi, be and the same is hereby affirmed.

Clerk
Dated: 5/28/99

US District Court
District of New Jersey

USA

v.

Joseph P. Galluzzi,

Dated 9/18/98

Judgment in a Criminal Case

Case No. 96-640

Attorney: Dennis Durkin

The Defendant:

was found guilty on counts 1-26 of superseding indictment on 4/24/98 after a plea of not guilty.

Title Section	Nature of Offense
18: 1341,1343,1346&12	Frauds and Swindles
18:1341&2	Frauds and Swindles
18:1343,1346&2	Frauds by wire
18:666&2	Unlawfully accept property of another intending to be infl.
18:1952&2	Reacteering-bribery

Date of Offense	Counts
8/92	1-11
3/87-8/87	12-15
6/92	16
8/92	17-21

The defendant is sentenced as provided in pages 2 through 5 of tyhis judgment is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay a special assessment of $1300 for counts 1-26 which sahll be due as follows:

It is further ordered that the defendant shall notify the U.S. Attorney or this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

IMPRISONMENT

The defendant is hereby committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of 90 months on each of counts 1-11 and 17 through 21, and terms of 60 months on each counts 16, and 22 through 26, all to be served concurrently, to produce a total term of 90 months.

Pursuant to prior law, it is adjudged that the defendant, is hereby committed to the cutody of the Attorney General of the US or her authorized representative, for imprisonment for a

term of 80 months, on each of counts 12 through 15, to be served concurrently with each other and with sentence imposed above.

The defendant shall surrender for service of sentence at the insittution designated by the Bureau of Prisons, before/on 12/7/98

SUPERVISED RELEASE

Upon release from impisonment, the defendant shall be on supervised release for a term of 3 years on each of Counts 1-11, 12-15 and Counts 16 through 26, all to run concurently

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court set forth below.) If this judgment imposes a restitution obligaiton, it shall be a conditions of superivsed release that the defendant pay any such restitution that remains unpaid at the commencement of the term of superivsed release. The defendant shall comply with the following additional conditions: the defendant is to submit to one drug test within 15 days of commencement of supervised release and at least two tests therafter.

The defendant shal report in person to the probation office in the district ot which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

1) Provide the Probation Office with full idsclosure of financial records to include income tax returns upon request of Probation and cooperate with Probation in the investiagion of financial dealings and provide truth monthly statments of income.

The defendant is probhibited from incurring any new credit charges or opening addtitional lines of credit without the approval of the probation office, unless the defendant is in compliance with a payment schedule for any fine or restitution obligaiton. The defendant shall not encumber or liquidate or otherwise has express approval of the court.

***

RESTITUTION AND FORFEITURE

The defendant shall make resittution to the following persons in the following amounts:

Name of Payee

County of Essex, Hall of Records $350,.000

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level: 28

Criminal History Category: I

Imrpisonment Range: 78 to 97 months

Supervised Release Range: 3 to 5 years

Fine Range: $ 12,500 to $1,000,000

Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Retitution: $350,000

Full resittution is not orde-ed for the following reason: The sentence is within the guidleine range, that range does not exececdd 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

FEDERAL RULES OF EVIDENCE
ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401. Definition of Relevance

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 703. Basis of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

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deliberate misrepresentations before a Board. One does not necessarily, have to commit perjury to be guilty of obstruction of justice.

MR. LAWRENCE:Your Honor, you're a hundred percent correct.But for purposes of guidelines, two things.we either have, if it's perjury by itself and there is no factual finding by this Court that the government was put to additional burden based on the testimony, then it has to be specifically perjury. If it's not specifically perjury then the Court is placed with the factual finding that the of Mr. Galluzzi werc intended to do and did in fact cause the government to go to extra lengths that they would not have, had he not testified that way. And that's the difference, your Honor.

THE COURT:I'm not quite sure your definition is that precise but go ahead with your argument, Mr - Lawrence.

MR. LAWRENCE:I basically refer the Court, as in the presentence report, to U.S. vs. Coletti and also U.S. vs. Cunningham. . Specifically, your Honor, I contest right now that there is no basis for this Court to make a determination that Mr. Galluzzi perjured himself at the SEC, number 1. And number 2, there is no basis before this Court to testify that the testimony before the SEC was sufficiently far reaching as to impose some incremental burden on the government, either investigation or proof, that .would. not have been necessary but

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for the testimony.

What Mr. Azzarello just testified to is Galluzzi told us a couple of things and that caused us to bring in other people. That, your Honor, that doesn't satisfy the burden. We have Mr. Tuttle who sat here for many, many days and said to this Court and this jury that he remembered every finite detail of every one of these deals and he knew all these people. The Galluzzi testimony in no way caused the government to go farther in their investigation or impeded them. You can*t make the finding based/on the record, your Honor.

THE COURT:You cannot?

MR. LAWRENCE:You cannot, your Honor.

THE COURT:All right. Anything else?.

MR. LAWRENCE:Additionally, your Honor, I will say that Mr. Azzarello's statements also presuppose, just because someone else says I did that analysis, it presupposes that Mr. Galluzzi could not have done the same analysis, and that's just not logically correct.

THE COURT:That doesn't wash. That was defense's main tactic in the trial and the jury didn't buy it and I do not buy it. That's nonsense.

MR. LAWRENCE:Thank you for your time, your Honor.

THE COURT:Anything further with regard to objections to the presentence investigation report?

MR. AZZARELLO:Just on behalf of the government we

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object on the basis of the lack of an upward role adjustment.

THE COURT: What?

MR. AZZARELLO:We believe a 2 point upward adjustment for the role in offense should be assessed to Mr. Galluzzi.

THE COURT: Two point adjustment where?

MR. AZZARELLO:It's not in the presentence report, your Honor, but it's in our sentencing memorandum that the government is:moving for a two point upward enhancement under 331.1 of the sentencing guidelines based on Mr. Galluzzi's role as a leader and organizer of this scheme.

THE COURT: Mr. Lawrencedo you want to be heard about that?

MR. LAWRENCE:Yes, I do, your Honor.

THE COURT: Leader of the scheme or organizer of the scheme. Yes, sir.

MR. LAWRENCE:Your Honor I agree wholeheartedly on this point with the presentence report.

THE COURT: I wonder why, but go ahead.

MR. LAWRENCE:Because they are correct, your Honor.

THE COURT: I see, it's only correct if it's in your interest. Go ahead, Mr. Lawrence.

MR. LAWRENCE:Thank you, your Honor. Particularly in the original presentence report and then in the response to the government's objection, I think that the presentence report correctly identifies some of the factors which preclude the

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Court finding as the government proposes. Specifically no other individual who Galluzzi is supposed to have schemed with was charged, much less indicted or prosecuted in this particular matter. I think that's a critical aspect of it. Additionally, it is clear from the testimony that Joe Galluzzi had no control whatsoever over A.G. Edwards or First Fidelity Bank, also critical factors in the Court's analysis. But I think the final critical factor which I do disagree with in the presentence report is a statement that Joe Galluzzi as first the financial advisor to the Board of Chosen Freeholders and then the treasurer had final decision making authority over all financial matters in Essex County. It's simply, your Honor, it's just not true. It can't be true. It's contrary -

THE COURT: He had tremendous input with regard to the way the county would respond. He didn't obviously have final determination of how third parties such as First Fidelity and A.G. Edwards would respond. I agree with you.

MR. LAWRENCE:And my point would be his tremendous input is infinitely different for this particular determination and final control over all financial matters. And I believe that that is contrary to law and contrary to the facts as the Court knows it. And on those, for that basis I believe that the presentence report was correct in denying or at least not reaching the same conclusion that the government presses on your Honor now.

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THE COURT: What say you if you want to respond, Mr. Azzarello?

MR. AZZARELLO:Yes, your Honor. Your Honor, first with respect to Mr. Lawrence's first point, there were other co-schemers who were convicted.

THE COURT: You mean Tuttle?

MR. AZZARELLO:Mr. Tuttle for one, also Mr. Alex Williams who your Honor will recall was one of Mr. Tuttle's supervisors, both pled guilty in New York to essentially, your Honor, the conduct that gave rise, some of the conduct of which gave rise to the charge against Mr. Galluzzi in this *came. So* that's the first point, your Honor, and that's something that I believe that probation was not aware of because it didn't occur in this district.

THE COURT: What about Mr. Lawrence's argument that, nevertheless, Mr. Galluzzi didn't have the input, have the final say?

MR. AZZARELLO:Certainly, your Honor, I think there's enough indication that Mr. Galluzzi did have a lot of control in Essex County and I think that was borne out over the weeks of testimony that we had in this court. I don't believe that it's necessary, your Honor, under any case law that he could have, he meaning Mr. Galluzzi, have final control or the ultimate decision making authority. But let's look at some of the evidence from trial. Your Honor will recall that it was

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Mr. Galluzzi who entertained offers from the underwriters It was Mr. Galluzzi who had a great degree of control in selecting whom the underwriters would be. He set the spread on behalf of Essex County on behalf of Irvington.

THE COURT: Well, I think your point's taken and Mr. Lawrence's point is taken. I want to double check case law with regard to my inclinations that one need only have substantial input to be considered a leader or an organizer under the circumstances. But, be that as it may, we will put them on the back burner.

MR. AZZARELLO: One last point. I think I indicated in the memo to the Court that at least the law is clear in the Circuit on the fact that Mr. Galluzzi need only exercise control over one other individual in the scheme and I think that --

THE COURT: You see the problem is did he control Tuttle? Did Tuttle control him? Or did they both have a nice, what we call semiotic relationship. That's what I consider more so than one dominating the other. I just have to double check case law on that in deference to both of you.

MR. AZZARELLO: Thank you, your Honor.

THE COURT: I don't think it requires that he be the, you know, the dictator or the CEO in that context.

MR. AZZARELLO: I think there is some case law that would also support that if Mr. Galluzzi was the maying force

behind the scheme, which clearly the government submits he was, then that would be an ample basis to provide an upward adjustment.

THE COURT: That will be. I'm not saying anything other than I'm going to review that.

MR. LAWRENCE: Mr. Williams and Mr. Tuttle pled guilty in New York to crimes committed in New York. They were not, they did not plead guilty and were not charged with anything that happened in New Jersey. Thank you.

MR. AZZARELLO: That's just not accurate. Mr. Tuttle even indicated Honor that he pled guilty in New York to falsifying bank records, some of which were the very records that went to the transactions that Mr. Galluzzi was paid on. So it's absurd.

MR. LAWRENCE: That's not correct.

THE COURT: All right. Anything further with regard to the presentence report?

MR. LAWRENCE: Other than obviously the significant issue of the 104 million dollars' bond, we have no other objections.

THE COURT: In that case then I think we have gone as far as we can today because -- How soon do you think your expert will - - he will be able to come here?

MR. MARRA: He thought Thursday or thereafter so then it's subject to your Honor's schedule.

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THE COURT: He can be here Thursday, did you Say?

MR. MA.RRA: He expected to recover.

THE COURT: How about the availability of your witnesses?

MR. D. DURKIN: He indicated Thursday. My expert indicated his schedule's clear Thursday. Maybe we can check back within the hour. Maybe Mr. Weinroth has faxed the letter that he indicated he would send to the Court.

THE COURT: Let's do it for Thursday the 10th at ten o'clock, at which time I will answer the questions that you posed as to the payment the Tuttle payment; what effect if any, does the Schneider and Brown payments have and the obstruction of justice argument, together with the government's desire to have Mr. Galluzzi denominated as an organizer and leader. We will answer those on Thursday and we will deal with the testimony of the experts or the profit, according to defense, the defense says the county made money.

MR. D. DURKIN: I have nothing further at this point.

THE COURT: All right.

MR. MARRA: Thank you, your Honor.

(The proceeding is concluded.)

IN THE US DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL NO. 96-640 (whw)

USA

V

JOSEPH GALLUZZI

Newark, New Jersey September 10, 1998

THE HONORABLE WILLIAM H. WALLS,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

RALPH J. MARRA, ESQ.
and JOSEPH AZZARELLO, ESQ.
Assistant United States Attorneys
For the Government

DENNIS DURKIN, ESQ., and DAVID LAWRENCE, ESQ. For Defendant

Pursuant to Section 753 Title 28 United states Code, the following transcript is certified to be an accurate record as taken stenographically in the above-entitled proceedings.

Yvonne Davion
Official Court Reporter

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THE COURT: With regard to this matter, let us call our witnesses. What's the problem?

MR. D. DURKIN: We advised the Court Tuesday morning Mr. Goldman is under subpoena. We received a letter that I made reference to and advised Mr. Weinroth of today's -- of the adjournment to today. Mr. Goldman is not here. We have made inquiry and have not heard back yet. We are prepared to proceed with the experts. But, as the Court will recall, we do have Mr. Goldman and he is not here.

THE COURT: Mr. Goldman's testimony would be appreciated, but I don't think it's vital. Let's go with the expert. Call your expert.

MR. D. DURKIN:. Is it your intention that the defense move first or the government?

THE COURT: It makes no difference. Is your expert here?

MR. MARRA: Yes, but we believe the burden to go forward is on the defense.

THE COURT: Let me hear what you have to tell me by way of your expert witness, Mr. Durkin.

MR. D. DURKIN:. My understanding is the government has the burden of establishing by clear and convincing evidence - THE COURT: It doesn't, that doesn't mean that I can't require that you go first.

MR. D. DURKIN: How can they meet their burden without

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testimony?

THE COURT: I'm going to hear their testimony too. Call your witness. Let's get going, Mr. Durkin.

MR. D. DURKIN: The defense calls Phillipe Ferrand to the stand.

THE COURT: You are challenging what has been said?

MR. D. DURKIN: No, I'm challenging the information that is contained in certification letter dated August 1998 by which the government filed a supplement to certification - -

THE COURT: But the evidence predicate is found in the trial. Let's go. go.

MR. D. DURKIN: I have the benefit of the Court's ruling.

THE COURT: Let's not quibble, Mr. Durkin. Let's go.

MR. D. DURKIN: Fine, Judge.

P H I L L I P P E F E RRA N D, Defense witness, Sworn.

THE COURT: Mr. Ferrand, you may move that chair up if you wish to make yourself more comfortable. Go ahead, Mr. Durkin.

MR. D. DURKIN: Thank you, Judge.

VOIR DIRE EXAMINATION BY MR. D. DURKIN:

Q Mr. Ferrand, by whom are you employed?

A Ferrand Jordan Company.

Q In what capacity did you function on behalf of that employer?

A I guess I'm the president of the company.

Q When was Ferrand & Company formed?

A February 1987.
At my request were you asked to review--

THE COURT: What is the company?

THEWITNESS: The company?

THECOURT: What is it?

THEWITNESS: What is it? We specialize in providing financial modeling software and consulting services to the public finance community.

THE COURT Thank you.

Q As it relates specifically to public or municipal finance, do you individually have experience in that field as it would relate to the opinion that you have been called upon to provide here today? And if you do, would you please provide us with the benefit of your experience?

A Okay. Yes, I do. I am the I guess the developer, the author of a computer program called Munix that is used by approximately 40 percent of the top 100 municipal bond underwriters and structuring for the number side of tax exempt bond issues. I also act directly as a consultant on technically demanding transactions and I have worked over the years on transactions, advance or funding transactions for the City of New York, Los Angeles Convention Center -

THE COURT: What have you done? You said you

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worked What have you done?

THE WITNESS: My role has been to assist either the financial advisor or the managing underwriter in developing the optimal financing structure for the advance for funding plan. So, basically, the purpose of my software is to assist public finance professionals in figuring out the optimal way of structuring the amortization schedule and the investment of bond proceeds.

THE COURT: For the amortization and for the investment of the bond proceeds?

THE WITNESS: Correct. So, in effect, the financing structure might be the best way to put it.

Q Prior to the commencement ofyour employment with Ferrand & Company, were you employed by any firm with a duty or function that related to the public finance and the advanced refunding capacity that you just described?

A Yes

Q By whom? When for the first time? And, generally speaking, what was your title and what was your duties and functions as it related to that employment?

A Prior to founding Ferrand Jordan & Company, I was a senior vice-president in the public finance department of Bear Stearns & Company in New York City. And, my role there was to manage there's a group within the department whose role it is again to develop the financing plans for advance refundings

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and other technically demanding transactions. I managed that. group. And, I was also the author and developer of Bear Stearns' internal public finance software.

Q While you were employed by Bear Stearns, can you identify, if you will, a sampling of on whose behalf you acted?

A Quite a number of them. I worked on transactions or studies that Bear Stearns performed for the Port Authority of New York and New Jersey; for the State of Connecticut; for the State of Mississippi; for the Delaware River Port Authority, among others. So, I probably worked on several billion dollars worth of advance for funding transactions while I was at Bear Stearns.

Q Without regard to the aggregate dollar value, how many individual refunding transactions, in how many have you participated to the present time precisely if you know, your best approximation if you don't?

A That's a question I have never been asked. It's got to be probably at this point probably in the hundreds, I would guess.

Q You identified a software program that you are the author of. My note indicates it's Munix?

A Munix, yes.

Q As a result of the endeavor that I ask that you undertake which brings us here today, were you able to determine whether or not the government's expert used Munix in forming any aspects of the opinion or the basis of the opinion that you

provided in this court?

A I couldn't tell whether There was no documentation associated with the government proposal, no back up or numbers, so I wouldn't be able to determine what they used to

Q Have you ever been published in the field of public finance as it would relate to advanced refunding transactions?

A No, I have not.

Q Have you ever participated in seminars as it would relate to public finance and advanced refunding transactions?

A Yes, I have been retained to speak at seminars specifically on the topic of advanced refunding at Standard & Poors, at the New York University's graduate or the Stern School of Business of New York University, the; graduate division. They have a program in public finance run by Dr. Robert Lamb (phn) who invites me on a regular basis to speak, specifically on this topic.

I have been paid to train the staff at the treasurer's office of the State of Washington; the City of Portland, Oregon, and a number of other large issuers specifically on this topic.

Q Is it then a fair summary of your professional endeavor for a period greater than ten years that you have worked to form opinions in regard to the economic impact based upon the mathematical calculations of advanced refunding transactions in the world of public finance?

A Yes.

MR. D. DURKIN: Judge, the defense would offer Mr. Phillippe Ferrand as an expert competent to provide an opinion with regard to that area.

THE COURT: Do you wish to voir dire as to qualifications?

MR. MARRA: Yes, I would, your Honor. Thank you.

VOIR DIRE EXAMINATION BY MR. MARRA:

Q Good morning, Mr. Ferrand.

A Good morning. I'm Ralph Marra.
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Q How many times have you testified in court as an expert?

A None. This is my first time.

Q And, how many times have you rendered an expert opinion in any type of legal matter?

A None. First time.

Q And is it correct that your firm's expertise is in the area of financial engineer and software?

A Yes.

Q Your firm is not an independent financial advisor. Is :hat correct?

A That's correct.

Q Municipalities do not, consult. your firm about how to raise capital or whether they should issue debt. Is that correct?

A That's correct.
Q Ferrand Jordan has never given an expert opinion valuing

loss. Is that correct?

A Correct.

Q Ferrand Jordan has never been called upon to investigate or give an opinion on how a loss occurred in a municipal bond deal. Is that correct?

A No. We have been invited. We've been asked on numerous occasions in the past to act as expert witnesses, but I normally declined because in most all such cases in the past we have so many clients throughout the U.S. that it's normally been, in my opinion, a conflict of interest to participate in these assignments.

Q Okay. So you've been asked but you have not done it?

A That's right.

Q Why don't you just tell us very briefly, because we're still on voir dire here, about your qualifications and about your ability to render an expert opinion here, what documents you reviewed for this matter.

A The documents that I reviewed for this are the report, Mr. Egland's initial report and his follow-up document and portions of the original documentation that Mr. Galluzzi and Mr. Tuttle presented in the original transaction.

I reviewed the verification report, not the complete report but the sections pertaining to the verification of the cash flows for the transaction.

THE COURT:Which transaction are you talkinq about?

THE WITNESS: I'm speaking about the Klein & Company verification report for the series 19893 transaction. There's a section of it where they review and verify the arithmetic accuracies of the cash flows. And they conclude by

THE COURT: He just wants to know what you reviewed.

THE WITNESS: That's what I reviewed. Sorry.

Q Anything. else?

A That is it.

Q You did not review First Fidelity work files on this deal. Is that correct?

A Correct.

Q You did not speak to Mr. Tuttle or anyone else at First Fidelity about this deal, did you?

A Correct.

Q You know Mr. Tuttle, don't you?

A Yes, I do.

Q In fact, you did work for Mr. Tuttle's

A Yes, I did.

Q At First Fidelity?

A Yes.

Q Did you speak to Mr. Galluzzi about this deal?

A Yes, he was the one who asked me to. He was the one who asked me to render an opinion to help him out here. So, yes, I did speak to him about it.

Q Did you have any other connection with Mr. Galluzzi

besides his retention of you as an expert?

A No, the first I heard: from Mr. Galluzzi was when I received a call from him asking me to do this.

THE COURT: What is your academic background?

THE WITNESS: I am 4 credits short of qualifying for a B.A. at Columbia. I do not have a high school diploma THE COURT: You do not or do have?

THE WITNESS: I do not.

THE COURT: You do not have a high school diploma?

THE WITNESS: That's correct. But, I was accepted to Columbia. With 3 years of high school, I was accepted and hired by Bear Stearns public finance department for a position which normally requires an M.B.A. or law degree.

THE COURT: I'm not interested in your spin on. I'm interested in what you actually have.

THE WITNESS: I have no academic degrees, sir.

THE COURT: You have no academic credentials. Is that correct?

THE WITNESS: That's correct.

THE COURT: Tell me this, with regard to financial engineer software, just what do you mean by that?

THE WITNESS: What I mean by that is this software is designed to help a trained public finance professional determine the lowest cost way of borrowing and structuring the financial elements of a tax exempt bond issue.

So, given market interest rates, given the whole range of possibilities that are available to the issuer with respect to how, what kind of securities can be included in the bond issue, how the various funds are required to by investigated and what the investment opportunities are, the program wlll determine the optimal or lowest cost way of doing this, given a set of market constraints.

THE COURT: So, in other words, your software is as, probably as all software is, it's a template or process for persons to plug in the numbers in a certain manner, right?

THE WITNESS: Yes, you could think of it that way.

THE COURT: Go ahead.

BY MR. MARRA:

Q Mr. Ferrand, did you actually work on this deal for First Fidelity Bank?

A. I was. At that point, First Fidelity was a client of mine at that point in time, I believe. But, I do not remember any calls or any I certainly wasn' t retained specifically to work on this. It wouldn't surprise me if at that time we might have received some calls from Mr. Tuttle regarding aspects of it. But, I really don't have any recollection of that.

Q Tell me this, when you say in your statement of qualifications that you received your undergraduate education in economics at Columbia University, what does that mean?
A What that means is that I completed substantially all the

requirements for a Bachelors degree in economics. I'm 4 credits short. I started working on Wall Street and just never turned back, in effect.

THE COURT: When did you start working on Wall Street?

THE WITNESS: It must have been 1971 or so.

MR. MARRA: Your Honor, I'm done with my questions.

THE COURT: Anything further?

MR. MARRA: Not on voir dire.

Let me just tell you, the government objects to this witness as an expert in this case on these bases: Number 1, he has never served as an expert in this capacity.

THE COURT: That, in and of itself, there' s always a first time.

MR. MARRA: Okay. Fine. Let's put it this way, your Honor I don't, I'm riot making the objection to exclude his testimony. I'm making the objection to, in a way, put your Honor on notice that the government disputes his ability to challenge the loss calculations. It is not something he has done before. It is not an area of expertise of either him or his firm. And, we think, at a minimum, his lack of qualifications on these issues should go to the weight of his testimony.

THE COURT: Have you ever projected net economic benefits its or losses with regard to refunding?

THE WITNESS: Yes, that's a routine part of what I do

when I'm retained to work directly on a transaction. In fact, in effect, I'm asked to work on these transactions.

THE COURT: By whom?

THE WITNESS: Normally by either the managing underwriter or the senior underwriter or the financial advisor.

THE COURT: With regard to what type of activity, public finance issues?

THE WITNESS: I do not get engaged in any way in policy issues so I have no expertise with respect to whether or not they should retake a refunding.

THE COURT:I'm not interested in that You and I cannot talk at the same time.

THE WITNESS: Sorry.

THE COURT: What I want to know is whether or not you have ever been involved in actually projecting losses or gains as a result of some financial activity undertaken by municipality or state or government.

THE WITNESS: Yes, I have.

THE COURT: And when and where has that been?

THE WITNESS: The most prominent one, my most recent prominent one was, which I specifically was retained to work with the comptroller's office of the City of New York in the specifically in assisting the staff and the financial advisor in A, finding or determining the specific criteria to use in

evaluating the underwriter's proposals with respect to advanced

reports, I have come to the conclusion that the net benefit, :he net economic impact of this transaction on Essex County was a net present value benefit of at least 2.7 million and that's- -- that 2.7 million is stated in terms of present value lollars as of June 1989.

Now, with the Court's permission the report that you Drovided has been circulated to the Court and counsel but it's iot in the record.

Would you first tell us the methodology that you used to reach that conclusion, the assumptions that played a role in whatever in the conclusion that you reached and to the extent Lt fits in the narrative, where you differ from Mr. Egland as you reached your conclusions because Mr. Egland, as you're aware, reaches a different conclusion. To the extent that the report is itself in that extent, please feel free to consult it.

The basic methodology is basic procedure. I projected the the cash flows, the prior issue, the issues that were refunded. I checked and verified that those agreed to the penny with the verification report produced in 1989. And then I reproduced and projected the cash flows of the 1989B refunding bonds. To determine the economic impact, I took the difference between the aggregate debt service on the refunded bonds and compared it to the debt service of refunding bonds, took that difference and then took the differential and discounted the cash flow

differences as of each date back to June 1989 using 8.25 which was the discount rate that Mr. Egland states he used in determining the present value of the cash flows.

The only - - not all of this is standard operating procedure except, meaning that it agrees with normal industry conventions, except for the 8.25 discount rate. And I think that -- so Mr. Egland differed slightly there from industry standard. The basis for -MR. MARRA: Let me stop you. I wanted to know -You're saying he's disagreeing. And before you move on, please tell us what the industry standard is, the basis of the disagreement and the impact of the disagreement as you see it in this transaction.

THE WITNESS: The normal industry standard is to use the bond arbitrage yield which is what the Samuel Klein & Company verification report used in computing the present value benefit of the transaction. And there really isn't any good reason for that except it's sort of industry tradition or way of presenting standard to issuers.

THE COURT: How much was it?

THE WITNESS: How much was what?

THE COURT: How much was industry rate?

THE WITNESS: The industry yield was 7. -- the arbitrage yield varies depending on the bond issue. In this

YAI 1iltl 711 so it was eqi.ial to

the bond arbitrage yield.

THE COURT: Instead of 8.25?

THE WITNESS: Mr. Egland uses 8.25 and that's what I used as well.

THE COURT: You used it as well?

THE WITNESS: Yes. The reason --

THE COURT: I didn't ask that. Go ahead.

Q So your statement is that Mr. Egland used a higher rate than the industry would have used?

A That's correct.

THE COURT: Mr. Durkin, let's not repeat the trial episode. I'm not deaf and I'm not completely dumb. He's already told us that. Let's not get involved in unnecessary -Whether there was disagreement or not, you used the same rate as Mr. Egland, for purposes of the analysis, that resulted in the analysis that you reached?

A Yes.

Q Please go ahead.

A It appears the justification used for the higher rate is the 8 and a quarter discount rate better captured the opportunity of cost capital that Essex County faced in this case. And the normal procedure in computing a present value benefit like this would be to use the decision maker's opportunity cost of

capital. And so because I agreed with Mr. Egland on that score I used his assumption.

When I used - - the result of using his assumption in with respect to computing the gross present value savings, which is simply a comparison of the gross debt service on the prior bonds to the gross debt service on the new bonds, is roughly present value cost of, here I'm referring to the original to my notes here or the results, if you simply compare gross debt service on the old bonds versus gross debt service on the refunding bonds that using 8.25 percent you come up with what appears to be a present value loss of 3.6 million.

Now, the problem is this, the refunding issue was unusual in that it included 6.1 million of, in effect, new money bonds, bond proceeds that were used for the purpose of reimbursing the county for bonds that had matured just prior to this transaction.

Now, in order for the comparison to be valid, you simply have to compare apples with apples. So all of the debt service on the refunding issue, if you include all of the debt service on the refunding issue, you have to compare it to all of the debt service on the refunded bonds and whatever other benefits were generated by the transaction. Since 6.1 million of bond proceeds was used for purposes other than refunding the prior bonds that are being compared here, you really have to add, in order to keep the comparison valid, the 6.1 million back to the benefits. You have to add that back as a benefit of the

THE COURT: Why do you have to treat it as a benefit? Why don' t you just deduct it?

THE WITNESS: If you deduct it, you have to deduct a pro rata portion of the refunded bond of the 1989 Series B bonds that were issued to generate that 6.1 million.

THE COURT: All right. So how much was the total? It. was $104 million'? Was it. or was it not?

THE WITNESS: The total aggregate was 104 million but of that 104 million roughly 6.1 million was not used for the refunding.

THE COURT: I appreciate that. So therefore why would you not then use 98 million or 97.9 million dollars as your base?

THE WITNESS: That's, in effect, what I did. I added back the 6.1 million.

THE COURT: All right. Go ahead.

Q Please continue.

A When you do that, you come up with a net economic benefit of 2.7 million, basically.

THE COURT: So that switches to 2.7 million, the deduction of 6.1 million. Is that correct?

THE WITNESS: That's correct. I'm rounding to the nearest - -

THE COURT: All right.
A So it's as simple as that. The error that the Egland

report contains is that he did not compare apples to apples and he simply forgot to add the 6.1 million, take it into account in his analysis.

QIs it then, in lay terms, your opinion, based upon your employment and experience to a reasonable degree of professional certainty, that if the 6.1 million dollars factor is included properly, the transaction results in a net economic benefit of 2.7 million dollars?

A That's correct. And that's what is shown by the working papers. And I have presented the working papers because any accounting firm in this country, anyone could confirm my statement.

MR. D. DURKIN: I have no further questions for the witness at this time.

THE COURT: Thank you.

MR. D. DURKIN: However, I would ask that I mark for purposes of the record the report that we made mention of, report dated September 3, 1998 on the letterhead of Ferrand - Jordan & Company from Mr. Ferrand to myself which I have previously circulated to the Court and Counsel.

With the court's permission, Judge, I would just like to hold onto that copy because I don' t have another copy at counsel table.

(D-1, report dated 9/3/98, marked for identification by the deputy clerk.)

THE COURT: We shall take a recess until 5 after the hour and then you may examine the witness if you wish, Mr. Marra.

MR. MARRA: I do, your Honor..

MR. D. DURKIN: Thank you.

(A short recess was held.)

MR. D. DURKIN: The Court and Counsel, Mr. Ferrand indicated he has some documents. I indicated tell us when he is referring to the documents.

THE COURT: Go ahead, Mr. Marra.

CROSS EXAMINATION BY MR. MARRA:

Q Mr. Ferrand, Mr. Durkin mentioned you have some documents. What are those?

A It's just a copy of the September 3rd letter.

Q Your report?

A Right, and directions to Durkin & Durkin.

Q I'm sorry, directions?

A Directions.

Q You didn't use those in the report, did you?

Mr. Ferrand, let's talk about a couple of things about this deal.

THE COURT: Mr. Ferrand, I hate to be a bad host but put that coffee away.

THE WITNESS: Sure.

THE COURT: Go ahead

Q I gave you an exhibit, a trial exhibit marked CH-9. And I know it says it's an analysis group chart, but do you know what it is otherwise besides an analysis group chart that is the source of the documents?

A Yes, I do.

Q And, in fact, it is Mr. Galluzzi's and Mr. Tuttle's analysis of this deal after it was done. Isn't that correct?

A That's correct.

Q And, this calculation shows that there is a present value loss as of 1989 of 2.3 million dollars. Isn't that correct, 2.335?

THE COURT:Loss or gain?

MR. MARRA: Loss. Net increase and taxes, your Honor.

The chart deals with impact on county taxes, so anything that's stated as positive here is a loss on the deal, that is it cost the taxpayers 2.3 million.

Q Isn't that correct, present value? A It appears that way, yes.

Q Okay. And, the discount rate or the rate that was used to calculate present value in this case was the arbitrage yield on the bonds, isn't that correct, 6.81 percent?

A That's what this states apparently, yes.

Q And, in addition, the 6 million dollars you talked about

was missing from Mr. Egland's calculations, Isn't that

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correct?

A No, that*s not correct. It doesn*t appear to be included in this calculation either. Where would you say it*s included? Q It*s included, instead of pulling it out and adding it at the end, isn*t it correct that what they did was calculated as part of the, as part of the old debt service? See the 15 million 532, that includes the 6 million dollars, doesn*t it? A I would have to refer to, well, that would not are you saying that the 15 million 532 includes bonds, the bonds that were discharged with that 6 point

Q Basically that they put the payment, the 6 million dollars into the old debt service payment required in 1989.

MR. D. DURKIN: I obj ect to the extent that Counsel is suggesting a fact I*m not saying it is or it isn*t, but Counsel*s statement that that is what that number means is certainly not competent.

THE COURT: Subject to him proving it by evidence from Mr. Egland, I have no problem with that.

A It can*t possibly be that because the debt service on the prior bond as of December 15, 1989 as per my records and as per the verification report, the Samuel Klein verification report, is 10 million 109. So had he added the 6 million dollars, the total old debt service should be showing 16.12 million and it shows 15.5.

0 Exactly. There is a $700,000 discrepancy. Isn*t that

correct?

A Your statement that that fifteen five thirty two is the sum of the old of the prior debt service and the 6.12 million is not true, obviously not the sum of those 2 numbers.

Q But neither is it true that they left the 6 million dollars out of there, isn't that correct, but they have included -- gear with me on this.

Isn't it correct that they have included at least 25 and a ialf million dollars of that 6.1 you say is missing in that L989 debt service?

A I think all we can say is that they have the debt service in 1989 is larger by that amount than is stated here in the verification report. That's correct.

Q And that would account for 5 and a half million of that 6.1 million dollars discrepancy. Isn't that correct?

MR. D. DURKIN: Objection to the conclusion suggested by counsel as contrary to the record.

THE COURT: It's 5.4.

THE WITNESS: You could argue that.

I could argue that, but doesn't that, in fact, take into account 5.4 million of what you say is missing?

Yes, it does. You can say that.

Q It does. Isn't that correct? So with the exception of seven hundred thousand dollars that we can't account for, the Dresent value calculation **on** this chart is correct using the

6.81 discount rate. Isn't that correct?

A No. The present value calculation that's shown on this chart as both yours, as Mr. Egland and I both agree, is not accurate.

Q Let me rephrase my question.

If you assume that 6.81 is the correct discount rate to use, the chart properly calculates the present value?

A I don't know that. I can't say whether that's true or not. That's nothing -- this report does not have enough information to enable me or anyone else to state that this present value calculation is correct at 6.81.

Q And that's only because you can't run the numbers right now. Isn't that correct?

A That's true.

Q And you have not run the numbers?

A That's true.

Q So you don't know one way or another whether this is correct?

A That's correct.

Q Using the 681?

A That's correct.

Q And 681 you say, by the way, would be the industry standard to calculate the present value. Isn't that correct?

A That would be - - It' s an industry standard and I would say approximately 50 percent of the bankers and financial advisors

engaged in public finance would use the arbitrage yield as the discount rate. So it's a common practice.

Q What numbers on this chart does the 8.25 percent that you use - - What numbers on that chart does that apply to? Which columns, in fact?

A Well, I guess the only column -- What I did was to compare the net - - -

Q Could you just answer my question? What numbers, what column on this chart does the 8.25 percent apply to? A It applies to the new debt service and the correct statement of the old debt service.

Q Well, the new debt service is being issued at the 6.81 percent. Isn't it?

A That's correct.

Q So it doesn't apply to that column. Doesn't it apply to earnings from cash flow? That's the only column where factually there was a 8.25 percent in this deal. Isn' t that correct?

A No. The convention in the normal, as Mr. Egland also pointed out in his report, the normal procedure for computing the present value benefit of a transaction like this is to take the present value of the old debt service as of the actual payment dates, compare it to the debt service on the new bonds as of the actual payment dates and then subtract the difference and compute its present value at the decision maker's

opportunity cost of capital. The opportunity cost of capital, as Mr. Egland appropriately pointed out, is probably best captured by the 8.25 percent. That's the yield that he used to, in effect, to value the savings and losses generated by the transaction.

Q Mr. Ferrand, you keep saying Mr. Egland said these things. Where did Mr. Egland say. that he used the, he used this opportunity cost of capital or this investment rate? Basically, where does it say he used that to discount the present value on this deal? Where does he say he did that?

A I don't have that report.

Q Which report are you referring to?

A The second.

Q His certification, correct?

A I believe so.

Q I'm showing the witness the certification filed with this Court, certification of Mark Egland filed August 5, 1998. I could show you where, if that will help you.

A Sure.

Q It's paragraph 10, is it not, under how he calculated the present value loss to 1998? Isn't it true what Mr. Egland did was he used an investment rate, that he used an assumption that the county could have invested their loss at 8.25 percent over that time andhe brought it forward? Isn't it a fact that's what he did?

Yes.

Q There is nowhere in that report or any report or Mr. Egland's testimony that he used 8.25 percent to reach a present value in 1989 dollars, isn't that correct? Please answer the question. Is that correct or not?

A That's not correct. By using a discount rate of 8.25 to take - - the discount rate can be used to take a dollar amount at any point in the future and restate it in terms of some point in time that's earlier. Or take that same dollar amount in 1989 and restate it in terms of 1998 dollars.

So the fact that he used 8.25 percent to future value is present value amount implies that that's the rate that he's using to value the losses and benefits of the transaction. Q But, you don't know that, do you?

A It should be, it would be obvious from his statement here that, if that's not what he did, it is certainly what he should have done. The whole notion of present value means to take a single discount rate and use it to come up with - - relate a future value onto some dollar value at another point in time.

Q Isn't it correct that going back to the documents you reviewed on this transaction - - By the way, you also reviewed Mr. Goldman's report that he issued with the local finance board. Is that correct? Did you review that?

A I believe I did, yes.

correct that no one used 8.25 percent to

calculate a present value for this transaction back in 1989?

A That's true.

Q And you say what Mr. Egland said in his certification, implies that he did?

A It's not an implication, it's a direct statement by him he said.

Q Where does it say he discounted the transaction to present value in there? Because I can't find it.

A The present value is estimated, and here I'm quoting, "The present value is estimated using an investment rate of 8.25".

Q That's to value the present value in 1998 of the loss. Isn't that correct?

A It's the same thing as saying

Q No, no, I'm not talking about

MR. D. DURKIN: Can the witness just answer?

MR. MARRA:Excuse me, sir.

THE COURT: You two make your address to me. What's the problem, Mr. Durkin?

MR. D. DURKIN: I would ask that counsel permit the witness to complete his answer.

THE COURT: Let him finish his answer then you put another question.

Q Let me direct you to - -

THE COURT: Has he finished his answer?

MR. MARRA:I thought he had.

Q Had you?

A Yes, I have.

Q Maybe we need to start with the basics here. Let's look at the heading over paragrah 10.

THE COURT: Paragraph what, sir?

MR. MARRA:Paragraph 10 of the certification.

Q Why don't you read what that says.

A It says loss calculation at the time of sentencing.

Q The time of sentencing is today, isn't that correct?

A Yes.

Q So that's September of 1998?

A Uh-huh.

Q Isn' t that correct? And what Mr. Egland says is he says the present value, and that' s the present value of the loss as of September 1998, correct?

A Correct.

Q Present value of the loss is estimated using. an investment rate of 8.25 percent, correct?

A Correct.

Q Does it say anywhere in that certification that he gave a present value for this transaction in 1989 using 8.25 percent? Does it say that?

A That's literally what that sentence states.

Q Literally it says that. Maybe we're having trouble with the English language, Mr. Ferrand.

THE COURT: I'm having trouble with the fact that were are having unnecessary iteration. You. have either made or riot made your point. All right. You said one thing. He said one thing. All right.

Tell me something about this 8.25, by the way. The 8.25 you talk about, it was an appropriate discount rate. And, isn't it true. that the cost of capital, you can use a gauge, it relates to, you can use an investment rate if in fact the county did invest money. Isn't that correct?

A That's correct.

Q But, in fact, they don't invest money, do they?

MR. D. DURKIN: As it relates to this transaction, Judge.

THE COURT: We will accept that qualification. Go ahead.

A I really don't know, in fact, what the county did with their investments. I'm basing my statements on Mr. Egland and mister - -

Q Didn't you state that you read Mr. Goldman's report?

A No. I si~ated that I read Mr. Egland -- Is it pronounced Egland?

Q Mr. Goldman's report?

A Goldman. I stated that the basis for my opinion is Mr.

Egland's analysis and the Samuel Klein & Company verification report. That is the sole basis really for my opinion with

respect to the loss or benefit of the transaction.

Q In fact, you don't know if the county invested any of this money, do you?

A That's correct.

Q Isn't it correct you don't know if the county invested the money and if in fact they did not invest the money isn't it correct that the arbitrage yield on the bonds would be the correct rate to use to present value the transaction?

A No, that's absolutely wrong. You would -- the arbitrage rate on the bond issue is simply the upper limit placed on the investment of bond proceeds. And normally it has nothing whatsoever to do with the opportunity cost of capital of the issuer.

So, we would normally not, in fact as a reflection what I believe to be the appropriate rate, I always suggest to clients that they avoid using the arbitrage yield mainly because it distorts the present value benefits of the transaction. And, the reason that the arbitrage yield is generally used in valuing the benefits is because it's the lowest justifiable rate that can be employed in the calculations. And underwriters have a natural -- Normally the implication of that is that it will tend to inflate the present value savings in a normal situation. So that's normally why underwriters prefer using that number because it states the benefits of the transaction in a way that they feel is defensible. It puts the

transaction in the best light in a normal case, and that's the reason it's used so often.

But, it has, it's an artificial number that is simply a legal limit on the investment of bond proceeds. It's not a number that you would use to value of the savings or the losses generated by the transaction. And it doesn't measure the true cost of the transaction.

Q If the county doesn't invest the proceeds, any proceeds of this bond deal at 8 and a quarter percent, isn't 8 and a quarter percent, it's an unrealistic number to use?

A If that were the case, that's true, yes. Okay. I think the actual investment, yield was higher, wasn't it, 4.4 or something?

Q That wasn't my question, what the yield was. My question was if the county does not invest the proceeds.

A That's true. If the County does not invest the proceeds at that rate, that rate is not appropriate.

Q No. Maybe you misinterpreted my question.

If the county, in fact, does not invest, does not invest any gains it gets from this transaction, does not do that factually, if it does not do that at 8.25, if it does not do that at all, you would not use an investment at all. Isn't

A . That is true.

Q As part of your review, did you have the opportunity to

review any statements Mr. Galluzzi made to the freeholder board about what the benefits of this transaction were?

A Yes.

Q Okay. Isn't it correct that Mr. Galluzzi, time and time again said the only benefits to this transaction was generating that 25 million dollars investment account?

A No. That's not true.

Q Okay. Can you tell me, let's look at a couple of things then.

I'm going to show you a trial exhibit of 3518 which is a transcript of the freeholder minutes of 4/12/89 prior to the closing of this deal.

Mr. Ferrand, why don't you read, go to the transcript page and read Mr. Galluzzi's comment that appears in the middle of the page beginning with "yeah". Do you see that?

A Okay. Yes.

Q Why don't you read that what he said, just that one statement.

A The key to savings is the 25 million dollars that will be available for capital improvements.

Q Okay. Now, let's go to, I'm going to give you the transcript it's B519 which is the freeholder minutes of 4/19/89, again prior to the closing of this deal.

Why don't we go to, I believe the first one is page 117.

Again do you see the. statement of Mr. Galluzzi's in the middle

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of the page? The benefit, the benefit to this, the benefit to this which was demonstrated on the other charts was the fact that you're going to have 25 million dollars available without having to appropriate it, without having to go out and sell bonds in 1994. That's the benefit. Do you see that?

A Yes, I do.

Q Now page 121.

Mr. Galluzzi at the top of the page, freeholder, if it was a straight refunding without generating the capital investment fund, I would agree with you absolutely. There is no benefit. Do you see that?

A Yes, I do.

Q Go over to page 143. Again Mr. Galluzzi's comments on the deal that take up most of the page and I'm going to skip to the middle of his comments. And if that 25 million dollars result - was not there within the next 5 years, 4 or 5 years, I would never recommend this because there is no benefit, it's a wash. Do you see that?

A Yes, I do.

Q According to Mr. Galluzzi there would not have been a deal without the investment account advantage. Isn't that correct?

MR. D. DURKIN: Objection to relevancy, Judge.

THE COURT: What is the relevance of this?

MR. MARRA: Your Honor, he says there's a 4.3 million dollars' gain on this deal or whatever, a 2.7 million dollars'

gain. Mr. Galluzzi is saying there is no benefit to this deal without the investment account.

THE COURT: Well, whatever. No, I sustain the objection.

MR. MARRA: Give me one minute, your Honor.

Q Just one last question, Mr. Ferrand. The 6.1 million that you say is unaccounted for in some of the calculations, it's correct that was used to pay on bonds that were retired right before this transaction closed. Is that correct?

A That's correct.

MR. MARRA: I have no further questions.

THE COURT: Anything further of Mr. Ferrand?

MR. D. DtIRKIN: Just one question.

REDIRECT EXAMINATION BY MR. D. DURKIN:

Q Mr. Galluzzi, Mr. Thttle or anyone didn't say anything in here in 1998. Do yOu stand by your øpinion that that transaction at issue 1998B refunding issue resulted in a savings to Essex County of' positive economic benefit of 2.7 million dollars?

A My statement of net economic benefit of transaction is stated in terms of present value dollars using standard methodology employed in determining the present value benefits of these types of transactions. It's based directly on the information provided by the verification report and using the methodology precisely as described by the Egland report.

And further to comment on the statements that Mr. Galluzzj has made here with respect: to savings are taken out of context because these refer to, it's clear that he's referring to what typically would be referred to in conversation as cash flow savings or benefits. He is not referring to present value benefits. At no point in time do I recollect that anywhere his stating or Mr. Tuttle stating that the transaction was undertaken or that this 25 million dollars generated a net P.v. benefit.

So my statement is based strictly on the cash flows and the principle and interest, the scheduled principle and interest as provided by the accounting firm that verified the transaction using the methodology and the assumptions as stated by Mr. Egland. And, it's stated in terms of present value dollars. And in those terms I can unequivocally say that based on that information the series 1980B refunding achieved a net economic benefit to the county.

Q Of 2.7 million dollars?

A At least 2.7 million. I have not taken into account Mr. Egland stated that there was at least, there were about another one million dollars in benefits generated by an economic refunding of these bonds. I ignored that because I could not, I did not have enough information to verify the accuracy of that statement.

Q I have no further questions for you, Mr. Ferrand. But,

just for purposes of record, when you, a moment ago, made reference to the Galluzzi statements, is it Correct that you were referring to the transaction, the excerpts of testimony before the board of freeholders that were provided to you by the government and that you previously had seen in preparing your report?

A Yes.

MR. D. DURKIN: Thank you. I have no further questions.

EXAMINATION BY THE COURT:

Q Your opinion is based upon the amount of 104 million,

A It's based on the, on comparing the full 104 million to full uses of the bond issue.

Q Really your figure is not based on 104 million, it's based 97.9 million, isn't it, as you and I talked about earlier?

Q The future savings are based on that net amount. of 97.9, right?

A Yes.

Q We started out with your saying there had been a miscalculation by the erroneous including of 6.1 million dollars of new financing. Didn't you tell me that?

A Yes, I did.

Q All right. Now if that figure were to be increased by 5.7

million, what would be your result?

A I'm not sure I understood the question.

Q Well, you're basing whatever you told us and what you told us specifically on a calculation that as far as apples and apples are concerned, to use your expression, that we're only dealing with 97.9 million dollars to compare the differential in the cost, the debt service cost of the old retired bond and the refunding bonds, right?

A Yes.

Q And, I am saying to you if that amount of 97.9 million were to be increased by 5.4 million dollars, what would be your opinion as to loss or gain?

A Well, my opinion would remain the same because I, my statement is based on - -

Q So the gain would still be 2.7 million?

A Well, if I only use 5.4 million, the present value instead of the full 6.1 million, then --

Q No, if you only use 7 hundred thousand. If you only 7 hundred thousand instead of 6 million, what would be your opinion?

A If I only used 7 hundred thousand?

Q Yes.

A I'm not sure I follow you, sir.

Q You and Mr. Marra reviewed CH9, did you not?

A That's correct.

Q And you looked looked at the old debt service of 15.532 thousand dollars, right? Mr. Marra made a blanket statement that this actually included the 6.1 million about you which you complained. You said it did not because obviously it should have, it would have been increased by more than 15.532. So then his fall back was that all right then it's 700,000 short. Do you remember that exchange that you two had?

A Right. My basic response is that this statement of that document that's labeled an analysis of impact of county taxes cannot be used. It does not have enough information to enable me or anyone else - -

Q I don't want you to, I want you to assume for a moment that the amount under consideration should more than likely be, as I have said, $103,300,000. And I want you to use your, I want you to extrapolate from that and tell me whether there is a loss or gain according to your discipline and your analysis.

A Well, the point I'm trying to make, sir, with all due respect -

Q No, I want you to make an assumption. I'm not asking you to challenge the assumption. I'm asking you to assume that

A Accepting your assumption, you also asked me to employ my standard methods and determine present value. And I'm telling you, sir, that, with all due respect, employing your assumption, nevertheless, I would not be able to use the appropriate -- I can't come to any conclusion whatsoever based

on these cash flows using your assumption or not.

Q I'm not asking you to do that. I'm asking you, you told me to put it very simplistically, that you based what you claim to be 2.7 million dollars gain primarily because you are saying that only 97.9 million dollars had been subjected to the differential. Didn't you tell me that?

A Yes, I did.

Q I'm saying to you, all right, we will accept what you said at this point. So I said to you to assume, and I don't ask you to question it, right. Let's assume that we increase that 97.9 million by 5.4 million. What would be your resulting opinion, quantitatively as far as loss or gain? That's all I'm asking you.

A Okay. If I use a figure of 5.4 million as the additional benefit, I would reduce the present value savings that I state by approximately 700,000. So that instead of showing a net benefit of 2.7 million, I would show a net benefit of 2 million.

Q How do you arrive at that?

A The way I arrive at that is as follows - Q No, I don't need to ask you that question. You're saying that is what you would say?

A That's correct.

Q That it would only be reduced by $700,000?

A Yes.

You are blocking Mr. Durkin's view. I just wanted to make sure you

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Q Why don*t you explain to Judge Walls how you went about doing that.

THE COURT: You are blocking Mr. Durkin*s view.

MR. MARRA: I just wanted to make sure you
THE COURT: I have a copy.

MR. MARRA: Does that work?

MR. D. DURKIN: I appreciate the Court*s concern.

THECOURT: You are blocking your associate*s view.

MR. D. DURKIN: If it accommodates the examination, I didn*t mind where the chart was, Judge.

THE COURT: All right. If you are satisfied, Mr. Durkin, I am satisfied. Go ahead. Go ahead, Mr.. Marra. Q Why don*t you explain how you went about calculating that present value loss in 1998?

A As I guess I explained in my testimony, my ultimate conclusion about the economic merits of the bond deal were summarized in Mr. Galluzzi*s presentation of the deal in the post funding close out report. The base case, as is shown in this exhibit here, suggests that there was a net increase in taxes to the county of 2.335 million dollars.

Q Present value, correct:?

A Present value as of 1989. So, what I needed to do then was take that present value in 1989 and move it forward to 1998.

And to do that I used the assumption that Mr. Galluzzi did in this exhibit, as well where his earnings from cash flow

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he estimated at 8 and a quarter percent, and simply took the
2.3 million dollars and grew that at 8 and a quarter percent
to 1998 to come to my approximately 4.7 million dollars
number in 1998.

Q So--

THE COURT: Why did you use 8.25.?

A I think there is some confusion about discount rates right now. And if you'd like, I guess I would like to explain why I used the 8.25 versus the kind of 6.81 here.

The 8.25 number, there's 2 concepts we are struggling with. One is how do we treat the county's loss in 1989 in 1998 dollars. In other words, how do we make them whole today. The appropriate way to do that is to bring the 1989 loss forward to 1998 at a rate that the county could have invested it,. assuming they are able to take that judgment from, you know, '89 and invest it.

Now, I recognize the county doesn't typically invest, but we have to create some hypothetical world here to make the county whole. And the 8 and a quarter percent is a reasonable assumption. It was used by Mr. Galluzzi in the earnings from cash flow and I adopted that assumption and brought the dollars forward 1989 to 1998 using 8 and a quarter percent.

Q Again, just to straighten out any confusion at any time, did you use the 8.25 percent as a discount rate to present value the deal in 1989?

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A No, I used the industry standard arbitrage yield on the bonds to calculate the present value of the old debt service and the new debt service, just I adopted industry standards to do that. I did not use 8 and a quarter to do that.

Q What's the industry standard?

A The industry standard is to use the arbitrage yield just as Mr. Ferrand suggested. And, moreover, it is common in that in estimating the present value of a deal like this you want to understand what the county's, what it's called, the weighted average cost of capital. In other words, what's the county's cost of capital. That's the appropriate discount rate that's used in finance, you know, for many, many years.

And the way to weigh an average cost of capital calculated, you had an entity, a cost of equity and that the cost of their debt of the municipalities doesn't issue equity. So we go right to the debt. What are the debt costs? The best estimate of the debt cost in 1989 was, the debt cost on this deal was 6.81 percent, and that's the number I used to calculate my discount rate. It's industry standard and it's widely accepted in finance as the appropriate method to calculate the present value.

Q In the course of preparing your expert opinion that you rendered at trial, did you, in fact, prove out these numbers that are contained on *CH-9?*

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Q In looking at CH-9, does CH-9, in fact, include this missing, debt service of approximately 6 million dollars? A Well, the missing debt service we're talking about are two payments that were made prior to the deal being funded. So in actuality what happened was when the proceeds from the bond deal were received, there were payments that needed to be made back to the general obligation fund to repay two payments that were made on the old bond. So it's essentially just a wash in the sense that it had to go back into the general operating fund. Rather than miss with the post refunding payment back to the general fund, I included those two payments in my old debt service number so that I would have an accurate comparison between the old debt service and the new debt service as the deal was looked at and evaluated.

Q Okay. So, the 2.335 present value loss on CH-9, in your view, is an accurate gauge of the loss on this case, present value?

A Present value 1989, yes.

THE COURT: What say you to the assertion by Mr. Ferrand about his and his reliance upon the 6.1 new financing amount, 6.1 million dollars new bond segment?

THE WITNESS: The 6.1 that gets deposited back into the general fund?

THE COURT: Right.

THE WITNESS: We either have to account for it after

the fact, as he did.

THE COURT: I appreciate you already explained what you did and you said you put it back in, but it doesn't add up to 6.1. I'm asking you what happened to $700,000?

THE WITNESS: There was $700,000 in perhaps accrued interest at the time of the, at the actual refunding when it was actually done.

THE COURT: Go ahead.

Mr. Durkin, I have not done as I did for Mr. Ferrand qualified in person as an expert because he was qualified at trial. Do you wish him to be qualified for these purposes?

MR. D. DURKIN: I took that as a given, Judge, and I don't consider it -THE COURT: I just want to make sure the record reflects that.

MR. D. DURKIN: I have no trouble in

MR. MARRA: That' s what I'm ' assuming too. That' s why I didn't go over that again.

Q Mr. Egland, you have reviewed Mr. Ferrand's report. Is that correct?

A That's correct.

Q And you've listened to his testimony here today?

A Yes, I have.

Q Is there anything that Mr. Ferrand said that makes you

change any of the conclusions you've given in this case?

A No.

MR. MARRA:I have no further questions, your Honor.

THE COURT:Mr. Durkin?

MR. D. DURKIN:Yes, Judge, briefly.

CROSS EXAMINATION BY MR. D. DURKIN:

Q I asked you to recognize once before, Mr. Egland, and I ask you to keep in mind here today that I am not part of the world of finance, an economist. So I may need your assistance as we go through some terms.

I'm not going to Well, in the first instance, CH-9, the chart you prepared based upon the information the close out report for the bond issue at question is before you, is it not?

A Yes.

Q And it includes columns of numbers, some of which are directly taken from the documents that came into existence in or about 1989. That's also correct, is it not?

A Yes.

Q Did you, in forming any aspects of the opinion that you provided here today, independently prove out or verify any of the numbers that relate to the information that came into existence in 1989?

A Yes.

Q How did you do that?

A I looked at the bond prospectus and the actual cash flows of the old debt service had all the information on the old

bonds.

Q So is it then correct, sir, that you took the numbers that were contained in the documents themselves and plugged them into whatever analysis you used?

A I replicated what Mr. Galluzzi did, using those documents. Q Fair enough. But I want to make sure we're using the same terms. You used the numbers that were in the documents themselves, correct?

A That's correct.

Q Did you undertake any effort to independently determine that the cash flow analysis contained in the 1989 documents was itself accurate?

A Well, a bond prospectus better be accurate. It's reviewed by the SEC and, you know, federal agency. So I took the bond prospectus as being accurate, yes.

Q So then it is correct that you did not independently establish that the cash flow analysis contained in the 1989 documents is itself accurate, did you?

MR. MARRA: Your Honor, I object in the sense that Mr. Egland is talking about the bond prospective and Mr. Durkin's question is including all the documents in the case and that's a big difference.

Q Let me go back. I asked you the question broadly. You limited it to bond prospectus, and I accept that answer.

Including the bond prospectus, but if there is some other

documents that shows the cash flow analysis **YOU** did it there and you did do it in the prospectus, I want to give you that opportunity. Do you understand that, sir?

A I believe so.

Q There's a cash analysis that's related to the 1989 transaction, it's contained in the bond prospectus as it's contained in other documents resulting to the 1989 transaction. That's a correct statement, is it not?

A Okay.

Q Do you know as a fact as result of your effort here, sir?

A I do. And the cash flow analysis is the same whether it's in the prospectus or some other document because it's -- if this is inartful, I apologize. It's crunching numbers.

Q The numbers are the same no matter what conclusion you may want to reach, correct?

MR. MARRA: I object to that.

MR. D. DURKIN: I'll withdraw it.

Q In any event, it is possible today, using the resources available to a person who discharges your function or Mr. Ferrand's function, to confirm the cash flow analysis that's contained in the prospectus or any of the other 1989 documents, is it not?

A I assume that to be true, *yes*.

Q Did you do that in regard to your participation in this proceeding?

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A I independently evaluated the bonds at their face and then --

Q I accept that as a true statement. Let's get past that point.

A Are you asking me if the bonds, the cash flows from the bonds were not consistent with the bond prospectus, the stated term sheets of those bonds?

Q I'm asking you whether or not you took the trouble to independently determine whether or not the mathematic calculation upon which you base your opinion was itself accurate. Yes I did or no I didn't.

MR. MARRA: Objection, your Honor. I there is some magic mathematic calculation - -

THE COURT: That's for the witness to tell us.

A I verified that the mathematical - - that this exhibit is mathematically accurate, yes.

Q Well, these, the numbers on this, pick any one of the columns, please, that comes from the 1989 dcicument.

A The new debt service of 1989.

Q That's the second column on CH-9, correct?

A Yes.

Q And if we go to the bond prospectus we will see the numbers that are in the column contained on CH- 9 under new debt service, will we not?

A That's correct.

Q Those numbers are derived by performing certain calculations that are common industry standards, are they not?

A Yes.

Q My question to you, sir, is whether or not you undertook, in forming your opinion, to determine whether or not the calculations which resulted in these conclusions under new debt service were themselves accurate?

A Yes, I did.

Q How did you do that?

A I took the terms of the bonds and actually forecasted the cash flows to determine if they were the same as the ones that were presented there.

Q And you satisfied yourself that that was accurate, did you not?

A I did.

Q In conjunction with that same effort, you made an effort to determine what impact the 1989 Series B refunding issue would have on total county debt, did you not?

A Yes.

Q And you formed a conclusion that it would increase county debt by approximately $104 million, did you not? That the issuance of the Series 1989 B bond would have an impact that increased then existing county debt to approximately $234,000,000, did you not?

A No, I think that misstates what I suggested. What I

suggested was that the new debt service added is $104 million And on the day of the issuance the old debt service, you see the present value is 99 million dollars. So you add an incremental $104 million on that day. And then decrease the old debt service to an escrow account over time. So that day, yes, they increased their debt by $104 million and then it's decreased over time.

Q It is a fact that in a refunding bond the reducement that you are describing occurs rapidly, does it not? That's the whole, the whole purpose?

A It occurs as per 1998 to the year 2,000.

Q What was the impact on county debt as a result of the, in dollar terms now of the 1989 Series B refinancing issue?

MR. MARRA: I object. These questions have nothing to do with Mr. Egland's loss calculations.

THE COURT: Does it, Mr. Durkin?

MR. D. DURKIN: I'll suggest it has to deal with the competency of the witness to provide the basis for government request that Mr. Galluzzi receive an enhanced term.

THE COURT: I'll permit it.

Q Did you do that?

A You will restate the question.

Q Did you make an effort to determine what in fact in dollar terms the $104 million Series B 1989 issue had on total county

debt?

A No.

Q Did you previously testify that the total impact, the result was an increase to approximately 241 million dollars?

A Yes.

Q Will you agree with me that the actual impact defined by outstanding principle was less than 4.6 million dollars?

A No.

Q Why not?

A They added $104 million worth of debt on that day. That's the increase in their debt. If you are operating in a closed system here, if at June 1989 all debt have to be cleared, they are also going to add, you're going to add $104 million that the county is going to have to pay back in addition to the 99 million dollars.

Now, fortunately they just received a big chunk of inflow of cash to deposit in an escrow account to allow them to decrease the old debt service. But it's a closed system and you will add 104 million dollars to the debt. You're not actually repaying the bonds. You are adding it on top of the old debt and then decreasing it over time.

Q Do you know of any person in public finance either in 1989, before or after, who would describe the impact of a bond issue such as this in the way you just did?

A Do I know anyone personally?

Q Yes. Yes, sir.

A I would have to question the people I know to see if they would characterize it as that.

THE COURT: All right. And as I told your adversarial colleague, you have either made or not made your point. So let's move on.

Q You also told us about your bond arbitrage yield, correct?

A Yes.

Q You told us that you used that for certain purposes in the computation that results in your conclusion that this was, this transaction had a negative impact upon the county, did you not?

A Yes.

Q Define for me what you mean by the term bond cash yield.

A It's the effective interest rate on the new debt service.

Q The bond arbitrage yield is a legal term, is it not, intended to describe what amount you as the issuer can expect to receive or the underwriter, rather, in the event there's a re-offer on the bond?

A Yes.

Q Does the bond arbitrage yield calculation take into account all costs associated with the issuance of bond on the Series 1989?

A Not all costs.

Q What costs does it not take in?

A I think the issuance costs are excluded.

Q If those costs are taken into account, what impact does it

have upon the conclusion that you have offered to this Court?

A None. It raises the effective yield about 7.1 percent and it doesn't change any conclusion.

Q So increasing the interest rate would not change the conclusion that you have offered to this court?

A It would be immaterial.

Q You have also testified in the past, have you not, that -Well, I'll withdraw that.

MR. D. DURKIN: Thank you, Judge. I have no further questions.

THE COURT: Anything further?

MR. D. DURKIN: No, sir.

THE COURT: By anyone?

MR. MARRA: No further questions.

EXAMINATION BY THE COURT:

Q Mr. Egland, Mr. Ferrand, in response to my question indicated that even if he increased 97.9 to 103 .3 - - 103.3 million dollars, his final opinion would only be that the County had saved 2 million or had had a net benefit of 2 million rather than 2.7 million. Do you remember him telling me that?

A Yes, I do.

Q What's your opinion with regard to that thought?

A I would take the *5* point, excuse me, the 3.6 million that he starts with and subtract the 5.4 so I would end up with

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about a negative 1.8.

Q You would end up with a negative 1.8?

A. I'm not sure how he got if I understood what you said, I would end up with a negative 1.8 million.

Q Why would your methodology be different?

A It's simple math.

Q So you just say he made a mathematical error?

A Perhaps we are not understanding the assumptions, but the assumptions that you presented -

Q What are your assumptions with regard to determining that?

A My understanding of the question you asked was if there hadn't been 6.1 remaining in your example, there would have only been, you would have subtracted 5.4 from that and ended Uf
with the 700,000 remaining. Is that correct?

Q No. What I am saying -- True, there would have been a gap of 700,000?

A There's gap of 700,000 that would be deposited to the general fund.

Q Right.

A So that suggests - - if I had his report I could run down the math.

Q If you had his report? I have his report.

MR. MARRA: I have one, your Honor.

Q Here's the report. Go ahead. I gave him my copy. A Then I want to walk you through, I guess, the calculation.

Q Go ahead.

A On page 1 of the report, this will help us kind of verify,

I guess, what your question is.

On page 3 of the report you say a present value analysis summary about 2/3 of the way down the page?

Q On page 3?

A Page 1.

Q Page 1, yes. Go ahead.

A You see the other benefits, the 6.1 million, it says other benefits.

Q I have 6.6 million 162?

A Yes 6.162, I believe that's the 6.1 you are referring to.

Q Right?

A I think what you're saying is if you subtract 5.4 from that you end up with 700,000?

Q Right.

A So the other benefits would equal 700,000 not 6.1 million.

Q Right.

A , So if you take the 3.6 is the negative at the top there

and you plug in the 700,000, you're going to end up with about a lttle over 3 million in negative costs. Because, you see, he adds the 6.1 million to get the net benefits of 2.7. So you would no longer add 6.1, you would now add your 700,000 in your hypothetical.

THE COURT:All right. Thank you very much. Anything

further by anyone?

MR. MARRA:No further questions.

MR. D. DURKIN: I have nothing further of this witness, Judge. Since we just did the calculations in regard to a portion of Mr. Ferrand's report, he's available to take the stand and explain where he thinks -

THE COURT: I asked him and he gave me an answer.

MR. D. DURKIN: He will stand by that answer. But if you'd like to, it could be consistent to the same chart, he can point it out. If the Court is interested in it, we are prepared to do it. If the Court doesn't need to do it, I accept that.

THE COURT: Thank you, Mr. Egland.

THE WITNESS:Thank you.

THE COURT:I only have one question to ask of Mr. Ferrand. He can re-take the stand. He's still under oath. Re-take the stand, Mr. Ferrand.

PHILLIPPE FERRAND, previously sworn, resumes and testifies as follows:.

EXAMINATION BY THE COURT:

Q Looking at your report, sir, once you get a chance to be seated, on page 1, is Mr. Egland correct in attributing other benefits to include our famous 6.1 million dollars?

A Yes, that's true.

THE COURT:All right. Thank you.

EXAMINATION BY MR. D. DURKIN:

Q Do you concur then, sir, in the conclusion reached by Mr. Egland? And if not why not? Explain the calculation in relation to **that** chart?

A Okay. From my understanding of what Mr. Egland was saying was that the net he is subtracting 5.4 million dollars -- I'm adding the full amount of the deposit to the general fund which was 6.1 million roughly as an additional benefit of the transaction. By subtracting out, I'm doing this in order to insure that we are comparing the full cost of the 103 million dollars transaction to the full, to the uses of those bonds which included - THE COURT: We all understand I think by now the underlying principles. It's just a question of math now. That's why I asked you the question as I put it to you.

Is it now 700,000 if you accept my assumption that 5.4 million was not, in fact, removed?

THE:WITNESS: No, I don't. That 5.4 million should be included bec:ause the 3 .6 million dollars present value effect is based on a comparison of the full 104 million to the 95.9 million of refunded bond. So it understates the benefits of the transaction by the amount of 6.1 million dollars benefit. That' s why I'm including it.

THE COURT:Thank you.

MR. D. DURKIN:I have nothing further, Judge.

THE COURT: Thank you very much.

Anything further from anyone now - - Mr. Durkin, have you presented all you wish to present? We understand Mr. Goldman's not here. He's sick apparently.

MR. D. DURKIN: Mr. Lawrence advises me that he has been in contact through our office directly with Mr. Weinroth who represents Mr. Goldman, your Honor. Mr. Goldman is not available today. Mr. Weinroth indicates he is available tomorrow. I don't know necessarily -THE COURT: What would he How would he help us? MR. D. DURKIN: That's where I was going to suggest I will give you a proffer and see where you want to go with it. Mr. Goldman acted as the financial advisor to the Local Finance Board in regard to the 1989 Series B. transaction. And to the extent that there is a contention that the transaction itself had no economic benefit, it is clearly relevant for sentencing purposes to establish that the Local Finance Board and its financial consultant either did not say there is no economic benefit or either explicitly or by the fact of the approval stated that there is an economic benefit to the transaction.

As I say that, however, it is important to remember that from the beginning the defense has contended that the economic benefit analysis standing alone is of no moment because of the policy questions with which there has been, to

my knowledge, and I shouldn't say to my knowledge, which Mr. Egland himself acknowledges he does not offer an opinion. That is to say even if this costs the borrower money if they had no other choice and had to do it at the time, that's a fact of life that you have to deal with.

THE COURT: Tell me this, the data contained in government's exhibit CH-9, what's the source of that? What is the sort of those data?

MR. D. DURKIN: I think the government could speak to it better than myself. But I believe the witness testified during trial that he went through a series of documents that were related to the series 1989 transaction and derived accurately certain portions of it that are then contained in the chart.

THE COURT: What is the source of these data?

MR. MARRA: Your Honor, it's the analysis that Mr. Galluzzi presented in his close out report to the county.

THE COURT: They are from the defendant, aren' t they?

MR. MARRA: That's correct.

MR. D. DtJRKIN: No, Judge, that's been the characterization. We provided testimony, and I think Mr. Tuttle himself explicitly conceded that the manner in which the numbers were developed was by the underwriter. The

underwriter gives it to the financial representative of the public entity.

THE COURT: Are those figures which your client

advanced at the time that this matter was passed by the county?

MR. D. DURKIN: Judge, I don't know whether I want to

say advanced. He certainly was the treasurer. These were the numbers that were given

THE COURT: He used those numbers, did he not?

MR. D. DURKIN: He, in conjunction with others.

THE COURT: I'm not interested he used those numbers, that's what I mean by advanced.

MR. D. DURKIN: These are the numbers that were used in the transaction.

THE COURT: If he used them then he will be bound by them. We are will recess until 1 o'clock at which time I will sentence Mr. Galluzzi.

(A short recess was held.)

THE COURT: There was something I failed to ask cou.nsel and I will do so before I proceed. With regard to the offense level and the calculation of losses, I want to know whether the defendant objected to the inclusion in the loss to the government, the First Fidelity Bank payoffs and the Schneider and Brown payments.

MR. LAWRENCE: I'm not sure what your question is.

THE COURT: With regard to the calculation to the amount of loss.

MR LAWRENCE: We specifically objected to the payments involving Messrs. Brown and Schneider, yes.

THE COURT: I remember that but what about First Fidelity.

MR. LAWRENCE: The payments to First Fidelity?

THE COURT: The payoffs.

MR. LAWRENCE: The payoffs from First Fidelity to Joe Galluzzi?

THE COURT: Yes.

MR. LAWRENCE: Your Honor, we could find no basis in fact for that not to be considered in the loss calculation because of the position of the presentence report then the conclusion of the Court that this was a reflection of the loss to Essex County.

THE COURT: That' s what I 'm driving at.

MR. LAWRENCE: The specifics, as you recall, involving Jersey City and that's the distinction.

THE COURT: I understand the loss to the government as reflected in degrees by the payoffs to First Fidelity but are not included in the direct alleged losses to the government.

MR. LAWRENCE: That's correct.

THE COURT: All right. I just want to make sure.

All right.

THE COURT: On April 24th of this year a jury returned a verdict of guilty as to all 26 counts against this particular defendant charging him, among other things, with mail and wire fraud and acceptance of corrupt payments. And today is

sentence day for Joseph Galluzzi. In the calculation of the offense level computation both sides, the government and counsel for the defendant, have agreed or at least do not object to the base offense level of 10 for these violations as found in the sentencing guidelines 2C1.l, nor do I believe is there any serious objection to the increase by two levels because the offense involved more than one bribe.

The parties do disagree as to further calculation. The government claims a loss to the government of at least 4.7 million. Defendant argues, on the other hand, that there was a net benefit to the county of 2.7 million dollars. The government argues that the defendant should receive an additional 2 point enhancement for aggravating role allegedly assumed by him in these crimes and we have to resolve them now before we sentence.

With regard to these crimes I'll get to the loss issue in a moment. But, let me deal with the others. And also there is an argument that the, there really is no argument, oh, there is an argument that the defendant should also be subject to enhancement: because of obstruction of justice because of his testimony before SEC hearing in July 1995.

When we treat the matter of the enhancements for aggravated role, we denied the government's motion on that for that aspect. It is agreed and it's undoubted that Tuttle, Galluzzi and McDonough, all of them together and several of

them at other times conspired and were active in committing these crimes for which they have been sentenced or about to be sentenced by another district court in New York and this defendant is to be sentenced by me.

That activity does not arise or rise to what the government seeks, that is to say that this defendant played a leadership role or supervisory role or that they satisfied the requirements of 3B-1.lc as particularly as it is construed by Third Circuit: case law and rely specifically upon United States vs. Cuzumano, (phn) 943 F. Second 305.

In that case defendant had actively solicited and engaged and planned and executed the kickback scheme, albeit that others were in a, technically a more authoritative circumstance. Here this was an ongoing activity willingly participated in by all. As to who did more than the other, I cannot say. But, I cannot find, by a preponderance of the evidence, that this defendant exercised the requisite elements to justify enhancing the adjustment by two points because of an aggravating role. Complicity does not necessarily mean control; nor does conspiracy alone, the following, the operation, the leadership and supervision of criminal plot.

I do, however, find, by a preponderance of the believable evidence, particularly from the evidence adduced at trial, that this defendant Joseph Galluzzi obstructed justice pursuant to 3C.1 in his sworn testimony before the SEC in July

1995.

At that time he perjured himself. He perjured himself by lying that his alleged work for A.G. Edwards was work. That he had had, quote, - that he had quote structured financial dealings. When obviously and in reality the money received by him was part payment of a $60,000 kickback acknowledgement for the August 1990 Essex County Improvement Authority deal which he had swung to the benefit of A.G. Edwards. There's no doubt in my mind, and I take as I say I'm only required to find by a preponderance of the evidence - - I have no reasonable doubt that he perjured himself and by perjury meaning that he deliberately testified under oath concerning material matter with the willful intent to provide false testimony. What he said was not a result of confusion, mistake or faulty memory. The SEC is a quasi-judicial agency for these people. What he said was willfully perjurious and we rely therefore upon United States vs. Dunnigan, 507 U.S. 87. So, therefore, he will, his base offense level is Increased by two because of a finding of obstruction of justice.

With regard to the loss to the government, the government claims a loss through its expert of 4.7 million dollars, approximately. Mr. Egland who testified at trial comes back today and repeats his basic contentions that a projection of the cost to the county now totals 4.7 million dollars. That is to say the cost incurred by refinancing what

this expert had said at the time of trial was a useless bond deal. We don't reach that point whether it was useless or not, it cost more to do than the existing bonds, existing bonds issue then in place.

On the other hand, Mr. Ferrand testified today that Mr. Egland's calculations were in error, his were correct and that in fact the county had benefited instead to the extent of 2.7 million dollars as a result of the 1989, 100 million dollars' bond issue. As a matter of fact, on page 1 of Mr. Ferrand's report he has a net present value benefit accruing to the county of Essex as 2.7 -- $2,738,818.02. And, simply put, he rationalizes this conclusion by seeing the differential between the debt service of the earlier bond issues and the debt service of the 1989 issue as of today leads him to that conclusion.

He argued that the government, through Egland, had omitted, had omitted in his calculation the effect of 6.1 million dollars in new bonding which had no antecedent. Consequently he considered that to have thrown, to have skewed the calculation of Mr. Egland resulting in, as I said, Mr. Ferrand's positive outlook for accounting. I frankly do not accept it because I don't believe Mr. Ferrand as a witness in this matter because when asked to review government exhibit CH-9 which reflects the debt service including 5.4 additional million dollars as effect on his calculations of 2.7 million

present value benefit, he opined that at best it would reduce the present value benefit by $700,000.

Now, I reject Ferrand's analysis because frankly it doesn't even make, it doesn't make common sense. One doesn't have to be an astute mathematician which in court is not to use Ferrand's figures to calculate from his present value analysis summary that if we reduced other benefits to $700,000, there would be a loss of $2,723,236.26. So I don't understand how a loss becomes a positive. That's how I believe and I find that Mr. Egland's calculations more likely than not are acceptable.

I adopt his conclusions found particularly at page 5 in his report which he expressed to us this morning. A truly accurate picture of the county's loss as of the time of sentencing is obtained by converting all of the costs of benefits of the bond deal into 1998 dollars. This will take into account, for example, both the costs and benefits of the debt service statement schedule in the 1989 bonds reference exhibit CH-9. The present value is estimated using an investment rat:e of 8.25 percent. This is the rate Mr. Galluzzi used to calculate the present value of the alternative debt servicing in t:he close out report and this is one number in Galluzzi's close out report that is consistent with actual market conditions between 1989 and 1998. Thus the cost of the refunding to the county are brought forward from 1989 to 1998 and discounted back from 2000 to 1998 at this rate.

In 1998 dollars the county's loss caused by doing the 1989 $104 million refunding, approximately $4,765,000, that makes, as I say, common sense. Because they are not really Egland's figures which he relies upon. They are Galluzzi's figures. This is this defendant's figures which he advanced which he adopl:ed and used to swing this deal in 1989. Those figures are found in CH-9. And if the defendant relied upon them then, I shall rely upon them now.

Consequently, the loss to the government is $5,013,796. How do I arrive at that? Because I include the $208,796 represented by kickbacks from First Fidelity to Mr. Galluzzi and I represent and I also include $45,000 paid to Messrs. Schneider and Brown.

As argued by Mr. Lawrence on behalf of Mr. Galluzzi that there's no evidence that either, there's no evidence that Schneider or Brown did nothing. I suggest that that's ample evidence that they did nothing. The evidence adduced at trial satisfies me again beyond reasonable doubt that neither George Schneider nor Mr. Brown not only did nothing, they didn't know what they were doing when they were trying to do something with regard to supposedly working out bond deals.

We have the benefit of a transcript before the SEC by Mr. Brown. We have the benefit, I think, of a transcript by **Mr.** Schneider who strangely developed a great sense of with th regard to what he did or did not do. So I'm well

satisfied that they did nothing for which they each was paid money at the assistance of this defendant.

Having said that then, the offense level is as follows: The specific offense level for the loss as required by 2C.1, . 2A relying upon 2F1.1, the table requires that the loss be adjusted by 14 additional levels -- strike that, that the level be adjusted by 14 additional levels. There having been a finding by me that the defendant Galluzzi obstructed justice by his perjury, that is increased by two levels. We therefore come to a total offense level of 28. Is that the calculations -

MR. AZZARELLO: Correct, your Honor.

MR. LAWRENCE: Your Honor, based on your rulings, that is correct.

THE COURT: That's what I said. I just wanted to double check the math.

All right. Having said that then I shall now sentence you Joseph Galluzzi. And with regard to that, I will hear frorr his been counsel, I'll hear from you Mr. Galluzzi, if you wish to be heard, I'll hear from the government through its representative.

Come to the lectern, Mr. Durkin..

MR. D. DURKIN: I will, Judge.

Judge, we have had our disagreements in this proceeding in the past and those disagreements are

the disagreements that we have had with the government in this case. In that respect it's no different than any other case. The litigation that brings us all here as experienced criminal practitioners is not for the faint of heart and is not for those who would shy away from disagreement.

Even recognizing that, however, and not presuming to speak either for the Court or for the government, there can be no disagreement that none of us here gathered envy the role you must now play.

I recognize that the jury has spoken and I recognize that the Court has made its finding in regard the sentencing guidelines to apply. Even then, however, there is a man before you who needs t:o be sentenced and I don't do it, Mr. Marra doesn't do it. Only one person does that, and it is you. We all recognize, as well as that, notwithstanding disagreement there may be, Mr. Galluzzi, accordtng to the sentence that you would impose, is going to go to jail. A custodial term is never an easy thing to discuss short of perhaps a capital crime. It is the most serious role as each of us view each of our functions in this system, any of us can occupy our time with.

As you see from the presentence report there was almost 60 testimonials that was provided on his behalf. This is all one of episodes, all of which brings us here which is his role in government in Essex County, in Irvington. Whether

it was a cour.ty practice with George Tuttle, it is not the entire man, Judge. You don't just sentence that man for the bad things that he has done, you sentence the entire man. And at risk of being presumptuous, Mr. Galluzzi is a 66-year-old man, married for almost 40 years, the father of three children.

Fortunately, as I stand here, the probation department has confirmed that in his life Mr. Galluzzi may have done bad things, but he unquestionably did good things as well. What can I point to? I can point you to the care he provided to his parents in their failing years when his father had Alzheimers. There was advice confirmed by the testimony there was that his father be institutionalized. Mr. Galluzzi would not hear of it. And keep in mind, Judge, that as Mr. Galluzzi was bathing and attending to his father's personal hygiene on a daily basis, and we all here gathered know what that phrase means in that report, it is also the time that Mr. Galluzzi is charged and was convicted and was about to be sentenced for running Essex County, demonstrating that at the same time one man is capable of both bad things and good things.

You have to sentence him. Those testimonials also confirm in regard to his in-laws, his wife's parents in their declining years, as before, he would not hear of anything other than taking care of their daily needs, financial and otherwise himself.

Fortunately, however, good as those things may have

been, probation, this Court, myself and even the government know that the good things that he did in his 66 years on this earth are not limited to what he did for his parents or his in-laws. I know that there's an argument about politics and I know there's an argument about government and I, as the Court - -

THE COURT: Use the microphone.

MR. **D.** DURKIN: -- knows that the government is going to stand up in a moment and talk about how Mr. Galluzzi took money that he shouldn't have taken and misused his public position. That is none to the good, all to the bad. It is a reality which we are here for. Also separate and apart for whatever bad things that were done outside of his family, he did good things.

Irvington, and the government will confirm, will not exist at least in the form it exists, say, a health care institution to provide care and treatment to an indigent population, largely indigent population, but for the hours that Mr. Galluzzi dedicated to his role on that board. It is of something that is recent vintage or some of us who are engaged in that process can sometimes be accused of being jaded because so often you hear those things in circumstances like this when the shoes get a little tight. But upon examination when you scratch that surface it turns out that the defendant was on the board or has the credential but he didn' t really do any of the

heavy lifting or work when the work needed to be done. We know, jaded though we all of us may be when called upon for no reason other than helping those less fortunate than himself, Joe Galluzzi who was doing bad things, answered the call and did good things with another portion of the same life that this Court is about to sentence.

I don't say that, Judge, to excuse, to understand, to explain the bad things. Simply to ask this Court to keep in mind that as it is sentencing Mr. Galluzzi you sentence the entire man. You sentence the veteran, the product of the Newark schools, the family man, the person who could have run from attending to his family or his in-laws. The person who at the time dedicated that - - I need not recount to the Court. I know the Court takes its responsibilities serious - - on behalf of Irvington General Hospital, the first occupation center role, the Police Athletic League building in Irvington. A record that anyone can be proud of and a record I ask this Court to take in account as it sentences Mr. Galluzzi.

More than that, because I began this with, I know we all know custodial term means jail and this Court has that responsibility. Judge, he's 66 years of age. The sentencing guidelines the Court is about to impose laymen's terms 8 to 10 years in jail. Judge, we ask you to temper your judgments with mercy Not only did he do bad things, not only was he responsible for whatever it is that the jury found him guilty

of, even though there will be an argument On another day whether or not that verdict is or isn't right, for today he's convicted. For today you have to render a sentence. Judge, 10 years, 8 years to a 66-year-old man, for all intents and purposes means there will be no time left with his family on this earth.

Forgive me, Judge, isn't this precisely what the sentencing commission in our courts had in mind when they talked about the stopgap -

THE COURT: I think you're misspeaking, it's 28 to 97.

MR. D. DUIRKIN: Judge, a significant period of time for a 66-year-old man. Custodial term under those guidelines is appropriate, Judge. But when you take together all of what Mr. Galluzzi has done in his life he, Judge, deserves mercy. He, Judge, deserves a chance to live some portion of his life **as it** remains on this earth outside of jail. He deserves, Judge, to spend some time with his wife, his children and his grandchildre;a, and we ask that you give him that opportunity.

I know Mr. Galluzzi wants an opportunity to address the Court, Judge, and I would ask the Court to provide him with that oppurtunity.

THE COURT: Certainly. He has that right. I'll be glad to hear from Mr. Galluzzi.

It should be noted I have read the various letters sent on behalf of Mr. Galluzzi from friends and relatives and

others. Go ahead.

MR. GALLUZZI: Thank you, your Honor. I'll be very brief

It's a very difficult time. My attorney has summed up pretty well or at least talked about my other life *outside* of he government. I also too recognize that the jury has spoken and I am here waiting to be sentenced to jail. But I plead that you really judge me on more than just one incident. My family to my family, my lovely wife who is here today and my three children who is expecting a child in 3 weeks, my son John son Joe and my other son first born, their spouses, my friends I am truly sorry. I apologize for what I have put them through. I am not a perfect man. I don't think anyone is. Although I have made, I know I have made mistakes, many have been judgment. But I ask your mercy to give me some time with my family.

Next to my family who I will miss, what I will miss more than anything else is the work that I have done outside of politics, primarily with mental health, serving on the boards and having served on those boards I no longer serve on. I ask your mercy, your Honor. I appreciate any considerations you an give. Thank you.

THE COURT: Who is going to speak on behalf of the government?

MR. D. DURKIN: Just Mr. Lawrence --

THE COURT: You want something else to say?

MR. D. DURKIN: I made a stop gap motion. I did not utter the phrase 5K2, for purposes of the record. Mr. Lawrence.

THE COURT: 5K2?

MR. D. DURKIN: Downward departure with regard to stop gap.

THE COURT: Prey tell, how would 5K2 apply here?

MR. D. DURKIN: Under the criteria, Judge.

THE COURT: What are the criteria?

MR. D. DURKIN: There are 2 factors, defendant's age and charitable links to the community or words to that effect. Ordinarily they are not to be considered in and of themselves based upon the totality of this case as presented to you in the probation report. We would suggest that at his age the kind of sentence you're discussing, first of all, would provide a basis for a stop gap departure, number 1. And number 2, under the other criteria involving charitable activity and links to the community, the information contained in the testimonials from the probation department will provide another basis. And together the 2 provide a basis for this Court to depart downward, as the stop gap provision permits, from the guideline range as determined by the Court in rulings that were made earlier today.

THE COURT: Does the government wish to be heard? I

can rule on this without hearing the government. Does the government wish to be heard?

MR. MARRA: Just to note, your Honor, that this is the first time we are hearing about this and we completely oppose it. There's no basis for a downward departure in this case.

THE COURT: Let me tell you, Mr. Durkin, and also Mr. Galluzzi, what I was going to say at the time of actual sentence and I may as well say it now because, it's applicable at this point. I'll say this from my own experience. Practically every politician has done good things in his or her life. Every politician has done good things in his or her life or else he or she would not have been elected or appointed to public office. So, consequently I'm not impressed when someone such as Mr. Galluzzi comes to me after many years of public service and says I have been good here, I have done this charitable work and I love my family, my family loves me.

Very seldom are crimes of public corruption, crimes of active recidivism. By that I mean simply that very seldom does a person such as a corrupted public official come to me with a criminal record. He or she generally comes clean as a whistle from any prior activity. So I'm not impressed by that. The motion for 5K departure is denied.

Let me hear from the government.

MR. MARRA: Thank you, your Honor. Your Honor, I will be brief. The government put in a sentencing memorandum in

more detail, and let me just say this, the government has strongly urged this Court to sentence this defendant to the maximum term of imprisonment provided for by the guidelines. A strong sentence will send a very, very strong message both. to other public officials who hopefully will be deterred by that sentence and it also is a sentence that fits this crime.

This crime was about, and I think your Honor heard this for almbst 6 weeks in thiscourtroom, pervasive corruption in this county on a grand scale. Mr. Galluzzi reached his corrupt hands into banks, underwriting firms and law firms as he sought to get kickbacks for himself and his friends. Mr. Galluzzi's question was always is this deal good for me rather than is this deal good for Essex County.

Mr. Galluzzi viewed municipal bond deals as nothing but a big pile of cash which he could stick his hands and profit by those deals rather than do what he was supposed to do which was to be the fiduciary for this county. And, the county has reaped the results of Mr. Gailuzzi's activities, much to its detriment, as the debt in this county is staggering. It is often referred to as Mount Galluzzi. And you will see officials of this county struggle to try and resolve problems with this debt.

If ever there was a case, and I think in our sentencing memo we refer to Mr. Galluzzi as the poster child of public corruption because if ever there was a case where you

could see

THE COURT: In. fairness it's not the only one.

MR. MARPA: Of course not but if there ever was a case where you could see negative results linked to a public official lining its pockets, it's this case. For those reasons, your Honor, we believe that Mr. Galluzzi should be sentenced to the maximum term of imprisonment.

THE COURT: Well, as I calculated the range for 28 with a criminal history category 1 is 78 to 97 months. That's the way I see it. Joseph Galluzzi, please stand.

As I said to Mr. Durkin in response to the motion I repeat just so you understand how I feel. And I feel, coming from the same background as you did, that of public service of many years, persons such as you and I who have been in the public wheel obviously have "good backgrounds" or else we would have never have got to where we are today or where you got to.

Consequently, it behooves your attorney to suggest that because you have such a good background you should riot be punished for these acts of greed which we call public corruption. I intend to punish you.

You over these 7 years had a good time. You had a good life. Your net worth to date represents that good life and I intend to punish you, punish you substantially even if it means bankrupting that good life because you have violated the basic trust of a public official which he or she owes to the

public. You are probably, in a great sense, worse than the average little thief or shoplifter or even mugger whom most of us fear. You do it by smiles and wheeling and dealing and you did it by smiles and wheeling and dealing. And you were, as I told Mr. Lawrence before and I made sure that you, I say this on appellate review, as far as I'm concerned you were guilty as sin as a result of the trial that I heard with this jury.

So I have no compunction and I have no problem in sentencing you as I do because you will be sentenced, as I am impressed by the severity of your chronic criminal activity over a period of 7 years, to the mid-range of the applicable guidelines.

Pursuant to the Sentencing Reform Act of 1984, it is my judgment that you, Joseph P. Galluzzi, are hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 90 months on each of counts 1 through 11 and 17 through **21;** and terms of 60 months on each of counts 16 and 20 through 26, all to be served concurrently. And pursuant to prior law, it is judged that you are hereby committed to the custody of the Attorney General of the United States or her authorized representative for imprisonment for a term of 90 months on each of counts 12 through 15 to be served concurrently with each other and with the above counts.

Upon release from imprisonment you are to be placed on a period of supervised release for a term of 3 years. This

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term consists of terms of 3 years on each of counts 1 through 11 and count 16 through 26, all such terms to run concurrently.

Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which the defendant is released. While on supervised release you shall not commit any other federal, state or local crime. You are prohibited from possessing a firearm or any other dangerous device. You shall not possess any illegal controlled dangerous substance and you shall comply with the standard conditions that have been adopted by this Court.

You are to comply with these following special conditions: You are to provide United States Probation Office with full disclosure of all of your financial records to include yearly income tax returns upon the request of a probation office. You shall cooperate with the probation officer in the investigation of your financial dealings, and you shall provide truthful monthly statements of all of your income. You are prohibited from incurring any new credit charges or opening additional lines of credit without approval of your probation officer, unless you are in compliance with the payment schedule f or any resolution obligation that I may impose upon you.

You shall not encumber or liquidate interests in any assets unless it is in direct service of the restitution

obligation or otherwise has the express approval of this Court. You are to make restitution to the County of Essex Hall of Records, Newark, New Jersey, attention Catherine Tamasik in the amount of $350,000. This restitution is due immediately. In the event the entire amount of restitution is not paid before the beginning of supervision, the United States probation officer shall pursue collection of the amount due and shall request the Court to establish a payment schedule that is appropriate. You are to notify the United States Attorney for this District within 30 days of any change of residence or mailing address if that occurs while any portion of the restitution remains unpaid.

Under these circumstances I find that you do not have the ability to pay a fine and I will waive the fine in this case. It is further ordered that you shall pay to the United States a total special assessment of $1300 which is due immediately. You, as well as your counsel, and he knows you have to the right to appeal this sentence pursuant to section 3742 of Title 18 of the United States Code.

We need a date for surrender.

MR. LAWRENCE: We have an application.

THE COURT: Yes, Mr. Lawrence.

MR. LAWRENCE: I forward to the Court, if I may

THE COURT: Certainly.

MR. LAWRENCE: Your Honor, I have forward to the Court

an application on behalf of Mr. Galluzzi.

THE COURT: He wants surgery?

MR. LAWRENCE: Yes. Your Honor, I can assure the Court, I'm not sure what the Court leaning is, but Mr. Galluzzi. and I have one thing in common, we both have arthritic joints. And for the last year he and I have discussed the necessity of him having his knee replaced. This is not something that has been borne out in the last few months.

THE COURT: When can we do it and how soon and how soon thereafter will he be able to be able to travel?

MR. LAWRENCE: We have provided the Court with an October 13th date where he is scheduled for surgery.

THE COURT: How long would post operative care take?

MR. LAWRENCE: Your Honor, I have been informed by his physician that anywhere between 4 to 5 weeks Mr. Galluzzi would be able to report.

THE COURT: I understand the government objects to this. I believe they're talking about -- Mr. Azzarello, he wishes to be heard. Go ahead. I haven't heard from you.

MR. AZZARELLO: Your Honor, as I indicated in my submission to the Court -

THE COURT: You said that he could do it under the Bureau of Prison supervision. Why should we impose the task upon the Bureau of Prisons?

MR. AZZARELLO: I have attached a letter from the

gentleman from the Bureau of Prisons who is in charge of the medical unit.

THE COURT: Right.

MR. AZZARELLO: Mr. David Goodchief (phn) of health programs branch and he has indicated that they have accommodated, they can accommodate Mr. Galluzzi's need for a knee replacement and that they also have accommodated much more serious and life threatening conditions of which I believe there's no dispute this is not a life threatening condition, that it's surgery that he needs at some point and that he elects to have taken care of at this juncture.

THE COURT: Normally under regular circumstances, *Mr.* Azzarello, a person being sentenced, unless there were substantial fear of flight on that person's behalf, probably would have between 30 and 60 days to wind up her or his affairs, right, normally? You want instant incarceration?

MR. AZZARELLO: No, your Honor. This is a concern that I think that the government has.

THE COURT: What is your concern?

MR. AZZARELLO: Your Honor, there's a proposed date of surgery sometime in October.

THE COURT: October 13th.

MR. AZZARELLO: There was no definite date given to the government in terms of how much time he may need to recuperate after that. There is no guarantee that when that

date comes, this physician who indicates obviously he has a very busy surgery schedule such that he can't perform it until :hat date, what Lf something occurs on that date and it has to be postponed?

THE COURT: Suppose I were to do it this way then, Suppose I were to set a date allowing for your concerns, allowing f or Mr. Lawrence's concerns saying that under those circumstances, because of the nature of the surgery which is basically elective as I understand it, that that date be met regardless.

MR. AZZARELLO: Your Honor, that's a possible solution. But I think I should address one other question your Honor posed to the government and that is is there any concern whatsoever - -

THE COURT: Is there concern of flight?

MR. AZZARELLO: Possibility of flight. Let me just point to two things in answer to that, your Honor. One is first and foremost when Mr. Galluzzi met with probation I assume sometime within the last few months, he indicated that he had a net worth of approximately $400,000.

THE COURT: Right.

MR. AZZARELLO: Then on August 24th, so to speak, on the eve of sentencing, he without explanation submits a personal financial statement indicating that that net

worth is $36,000, not attempting to explain in any shape, manner or

form, your Honor, what happened to the 360 some odd thousand dollars.

THE COURT: That was before Black Monday.

MR. AZZARELLO: That is true, your Honor.

THE COURT: Go ahead.

MR. AZZARELLO: Let me just note for the record that I didn't lose on Black Monday $360,000, your Honor.

THE COURT: Go ahead, Mr. Azzarello.

MR. AZZARELLO: But, your Honor, at a minimum it's certainly, in all seriousness, it certainly raises a concern from the Government's perspective as to what happened to the $360,000 that just suddenly disappeared without explanation.

THE COURT: What does that have to do with his being available to begin his sentence, though? I appreciate your concern and I'll hear from you.

Yes, Mr. Lawrence, what did you want to tell me now? Mr. Lawrence, you want to say something?

MR. LAWRENCE: I would like to say that right know Mr. Galluzzi is under an order from the Essex County Superior Court Judge Yanoff and is being scrutenized by that gentleman Steven Dratch where he is not allowed to dissipate funds. And bringing this up right now because this man wants to have his knee replaced before he goes to jail for a term over 8 years is reprehensible. It has nothing to do with whether he's going to leave or not, and this is ridiculous.

THE COURT: It*s seven and a half years.

MR. LAWRENCE: This is not elective surgery. THE COURT: If it*s not elective surgery then why not done in September?

MR. LAWRENCE. If you will look at the letter that was submitted to your Honor by the United States Government, it is that Mr. Galluzzi went to the doctor and said give me the earliest possible time and the doctor gave him the earliest possible time which was October 13th.

THE COURT: No, wait. That*s your doctor, isn*t it?

MR. LAWRENCE: Yes.

THE COURT: Your doctor?

MR. LAWRENCE: That*s Mr. Galluzzi*s physician.

THE COURT: All right. When I say that I*m talking about it*s not the government*s doctor.

MR. LAWRENCE: No, the government elicited a letter from our doctor that they dictated to the doctor

THE COURT: Fair enough.

MR. LAWRENCE: This is not elective surgery. Elective surgery is something this is surgery based on a pain threshold.

THE COURT: In that case maybe he should go to one of the local hospitals on an emergency basis.

MR. LAWRENCE: Your Honor, we have a date set specifically as the Court said himself

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THE COURT: Keep in mind what I said, if it's that bad maybe he should go now. Today is the tenth of September and he is waiting a month before he says this non-elective surgery - -

MR. LAWRENCE: That he will live with for the rest of his life, your Honor.

THE COURT: Mr. Azzarello, yes, what do you want?

MR. AZZARELLO: I would like to finish the thoughts I was trying to convey to the Court before I was interrupted.

THE COURT: Right.

MR. AZZARELLO: First of all, the letter t:hat the government submitted from Dr. Booley (phn) is the letter from the defendant's own physician who indicates it is elective in nature. It's not medically necessary.

THE COURT: As far as I'm concerned it's elective.

Move on.

MR. AZZARELLO: My point is this, your Honor, these two facts the Court should look at together in determining whether or not there is a possible risk of flight, the following one of the $360,000. If it's out there, your Honor, then it's available to Mr. Galluzzi. We don't know where it

went. He didn't explain to probation or the Court how his net worth dropped by $360,000 inside a month. I think when you juxtapose that next to the following time frame, it raises some concern.

The defendant indicates no, makes no indication to

probation, when he's interviewed by probation, that he is in any need of any surgery or is in any pain. He indicates that he's in fine physical condition. Then on August 3, 1998 of this year the draft presentence report goes out indicating that he objected to a lengthy term of incarceration. Then, your Honor, coincidentally on or about that very date, in fact, if you look at exhibit B to the government's submission the letter from Dr. Booley, the defendant's physician indicates that on August 3, 1998 Mr. Galluzzi returned to his office for a follow-up visit and he had not seen him for approximately a year.

THE COURT: Anything else, Mr. Azzarello?

MR. AZZARELLO: I would just request that the Court impose electronic monitoring. If the Court is going to set a date by which certain the defendant must receive this operation or undergo this operation, that it impose electronic monitoring. And if indeed the defendant has any other monetary assets that he can post as further security to this Court, that he post that until such time as he has to surrender.

THE COURT: Mr. Marra wants to suggest something to you.

MR. AZZARELLO: If there's any collateral, he can post it, whether it be real estate of relatives --

THE COURT: How much is there now? It's the house, isn't it, one house?

MR. LAWRENCE: Two.

MR. AZZARELLO: I believe the second house was posted after the conviction.

THE COURT: That's right. Which totals what?

MR. AZZARELLO: If I can have a moment.

THE COURT: How much does it total, Mr. Lawrence?

MR. D. DURKIN: I believe it's $200,000. I believe the bond is $200,000, Judge. It's reflected on the first page of the presentence report secured by the 2 pieces of property.

THE COURT: You're right.

MR. D. DURKIN: May I just briefly perhaps -

THE COURT: Yes, Mr. Durkin.

MR. D. DURKIN: Mr. Galluzzi's first financial report indicated a net worth of 94,000. The probation report included the recitation of assets but didn't include the recitation of liability. The second report indicated, as I'm understanding some circumstances where the things that were

in the first one were corrected but there's no $350,000 swing. It's like a $40,000 swing. In a related piece of civil litigation Judge Yanoff entered an order which is basically a restraining order that says there whatever you have Mr. Galluzzi at pain of contempt - -

THE COURT: If one is going to flee the jurisdiction I don't think he or she is concerned whether he violates a federal or even a superior court ruling. So I'm not really

impressed by that, Mr. Durkin. Do you understand that if you're going to flee, you're going to flee, if you're going to try to flee. The only problem with this it's doubtful you can flee too far.

MR. D. DURKIN: That's correct. And Judge one last, to the extent there's an implication that Mr. Galluzzi's knee condition is brought up -

THE COURT: I need no further argument. The defendant will surrender on December 7th at 10 o'clock in the morning. In the interim he will wear and pay for the expense of an electronic monitoring, monitored by pretrial services and U.S. marshal's office. I think that takes care of your concern, Mr. Azzarello, basically, does it not?

MR. AZZARELLO: Yes, thank you, your Honor.

MR. D. DURKIN: In anticipation of surgery, I imagine the doctor is going to say we have to remove it and we have to make an application to probation.

THE COURT: Remove what?

MR. D. DURKIN: The bracelet.

THE COURT: Obviously he would put it on on the non operating leg, I assume, and I assume the doctor can remove that with due medical care.

MR. D. DURKIN: I'm not expert but there's one case where we had the surgeon require the bracelet be removed before the operation occurred.

people getting together. I don't remember who it was for or what it was about.

Q Did there come a time when you provided any legal services on any bond issue by Essex County?

A Yes.

Q What bond issue or issues?

A It was in 1989. I believe it's the one I identified here..

MS. BROTEACKER: Please mark this Exhibit 3.

(Exhibit Number 3 was so marked for identification.)

MS. BROTBACKER: Mr. Schneider, I'm giving you what has just been marked as Exhibit 3.

Q Would you please look at Exhibit 3 and tell me if it refreshes your recollection as to what bond issue you worked on?

A Yes. That appears to be it.

Q What bond issue did you work on for Essex County?

A This one here, I believe.

Q The one represented in Exhibit 3?

A Yes.

Q For the record, could *you* state what that bond issue is?

A County of Essex, New Jersey, general obligation refunding bond series 19893 as in **boy.**

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Q How did you come to work on this issue? -.

A Somebody at First Fidelity contacted me.

Q Who?

A I don't remember. This is in the beginning of 1989. I don't remember who it was. I know a lot of people at First Fidelity.

Q Approximately when in 1989 were you first contacted by somebody at First Fidelity?

A I don't recall the date.

This was June when this happened. Obviously, it was sometime between January and June, because I know it was in limbo between the two law firms at the time.

Q Can you place it closer in time to January or June?

A I can't say.

Q Were you contacted by telephone?

A Yes.

QWhat was said to you, and what did you say?

THE WITNESS In 1989 what was said to me?

MS. BROTBACKER If you can't remember the then the general —

A I can't remember. I was just asked if I was in working on a bond issue for the county. Words to that effect.

Q And what did you say?

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A said "Sure." That's what —— I'm a lawyer -I'm in the business of doing. Legal stuff.

Q Was anything else sajd during that conversation concerning what you would be doing on the bond issue?

- A Just reviewing documents.

Q Were you told what documents you'd be reviewing.

A These type of documents that I identified here.

Q Are you ref erring to the documents that you previewed to us today?

A Yes. Those type.

Q What else can you recall from that conversation, if anything?

A Not much more other than that they'll be.in touch, there will be a meeting and there will be other conferences. That's all I remember. It was an introduction type.

Q What's the next thing that happened on this bond jssue that you were involved in?

keep in mind this is six years ago, I
remember getting some documents that were given to me or mailed to me, meeting with people, telephone conferences. can't remember the order of anything though.

Q Who sent you documents., or who provided you with documents?

A Somebody from First Fidelity. I don't remember

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who. It's not one of the people that I knew. I knew a number of people from First Fidelity just from government politics and social stuff.

Q What documents were you sent?

A I don't remember. I assume these or some similar to these. I don't know what they were -- specific.

Q Do you recall ever actually receiving the documents that you previewed to us today?

A I don't recall specifically receiving any particular document. I remember receiving "documents." What they were -- today *I* cannot tell you what they were.

Q Did you attend any meetings with respect to thLs bond issue?

AYes. I attended meetings.

Q What meetings did you attend?

A There were meetings with other lawyers, some people from the bank, some other people from other companies.

Q What other lawyers attended any meetings that you attended?

A You told me not to guess, so it's difficult for me to answer that question.

I see there's something here from Salerno and Bromberg (ph), so it could possibly have been someone from that **firm**

Q Well rather than doing it this way, do ycu have any recollection, as you sit here today, as to any specific lawyers that were at any meetings that you attended?

A I can't say with certainty.

I can assume who was there because

recollection of meeting with people in 1989.

Q Approximately how many meetings do you have a recollection of having attended with respect to this bond issue?

A I guess about three or four.

Q Were the lawyers at all these meetings, or were some meetings with other individuals?

A I believe it was mostly lawyers.

Q You testified a moment ago that you recalled bankers being at A I still remember the first meeting of bankers.

At the first meeting there were more people than the other meetings, that's why I 'm thinking there might have been some people from First Fidelity there.

Q Do you recall any people from First Fidelity. being at any meetings that you were at?

A I just said "I think the first one", there might have been banking people there.

Q When you say might", do you have a recollection of--

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A No. I don't have a specific recollection I mean, this is six years ago. I really don't recall specifically. I've had thousands of meetings since then with multiple people, I've handled hundreds of cases since then, so it's difficult *for* me to recall who was at a particular meeting.

Q So, as you sit here right now you can't say with a certainty that you attended any meetings that anyone else from First Fidelity attended or any other banker attended?

A I know I was at a meeting with First Fidelity people. That's my best recollection.

Q Who from First Fidelity?

A I don't recall. Not any of the people that I knew before then.

Q Who did you know before?

A I knew Jerry Greco, I knew Clancey. I can't think at that time who I knew who was around. Farridy, I believe, was around. Banking people sort of merge together. I'm not sure —— or he was with another bank. Bank people move around, and I mixed one bank with another so I 'm not absolutely certain, but those are some of the guys i knew in Fidelity

Q Were at the meeting or not at the meeting?

A Oh, I don't know if they were at the meeting. These are people that I knew socially through social,

political arena, so to speak

Q If I tried some names on you do you thi.nk that would refresh your recollection as to who was at the meeting, or

A It might.

Q Are you familiar with a James Ness.

A No.

Do you have a recollection of attending any with James Ness?

A I don't remember the name James Ness.

Q Are you familiar with an AlexanderWilliams?

A I don't remember an Alexander William.

Q Are you familiar with a George

A George sounds familiar.

THE WITNESS What's the last name?

MS. BROTBACKER: Tuttle.

THE WITNESS Title?

MS. BROTBACKER Tuttle, T-U-T-T-LE. THE WITNESS Tuttle?

A I have a vague recollection of a George. I don't remember the last name.

Q Do you recall a "George" being at any meeting that you attended with respect to this bond jssue?

A I can't remember specifically who was at this meeting or any other meeting.

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somehow during the course of this thing.

MS. BROTBACKER: Mr. Schneider, I'm handing you what has just been marked as Exhibit 4.

Q. Is Exhibit 4 the document that you were just referring to where Mr. Sally's name is on the back?

A Yes

Q What did you on this transaction?

THE WITNESS: What did I do"

MS. BROTBACKER: Yes.

THE WITNESS: Professionally, as a lawyer?

MS. BROTBACKER: Yes.

A. I reviewed a number of -- this type docuemnts.

Q. You're referring to Exhibit Number 4

A. Right.

I discussed them with the other lawyers involved; talked to First Fidelity people about what my -- what would be required to do, as I recall.

Q. Whjat did they tell you you'd be required to do?

A. I don't remember. I don't remember. Just review documents and cooperate with the other lawyers in the case, and they

suggested, I remember at the time, they suggested I do some research. What I did -- I went and spent two days down at the federal law library going over this type of stuff.

Q. What type of stuff?

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A. Securities.

Q. What issue were you specifically researching?

A. No. I would be researching the law and the treaties on these -- doing these type of things.
Q. What type of things?

A. Bond work.

Q. Can you be more spcific as to what you were researching with respect to bonds?

A. No. I can't. I can't be more specific, as again, this is six years ago. I'm in the library once a week, so I can't remember back then what I was doing, but I know I was researching in -- the reason I had to go to the federal law library because we don't have those type of speciality boks in our office. As a matter of fact, I didn't even have an office. Then I was shsaring space with lawyer. That's why I went down there.

I just read everything I coiuld get my hand on that related to bond issues, underwriting, legal responsibilities when you represent those people, what to look for, what to do, and that's why I went over.

Q. Did you write any memos concerning your research?

A I don't recall.

Q With respect to Exhibit 4, what, if any, work did

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you do on this documents?

A. Well, as I said, I read it over, I studied it, I talked to other lawyers about it.

Q What lawyers are you referring to?

A My best recollection, probably Sally --
Q When you say "probably"--
A -- I'm not sure, beacuse I don't have a specific recollection, again. you know, you're asking about conversations and work I did on something six years ago, and I've had thousands of cases since then.

I see a note here on the back "Salerno" with his phone number, so I just have to assume that I probably called him or spoke to him or whatever. I see a "Jack K" written on the back of here.

Q. And why were you specifically reviewing this document, menaing "Exhibit Number 4"?

Where you reviewing it to determine whether all the Blue Sky surveys were correct?

Were you reveiwing it to make sure that--

A -- I was reviewing it generally to make sure that everything was in there that's supposed to be in there, and there was nothing in there that should not be in there.

I mean, these are -- what I knew then and what I know now, they're more or less form docvuments and there's not too much difference between one or the other, that's why

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I have some here that are unrelated because I was comparing them as I recall back then, with other similar documents on other issues. I remember doing that.

MS. BROTBACKER: Mr. Schneider, I'm handing you what has just been marked' as Exhibit Number 5.

Q Do you recognize Exhibit Number 5?

A Not specifically. No.

Q Do you know where you got Exhibit Number 5 from?

A Probably from MaCarter & English.

Q Do you have any recollection of receiving it from MaCarter & English?

A No. I do not. Not specifically. No.

Q What, if anything, did this document have to do with your work on the Essex County transaction?

A I don't recall. This might have been one that I was given to take a look at to see model—type things, model—type

documents to compare and educate myself, familiarize myself with the detail involved.

I recall the Sally lawyer was an expert on this stuff, and he was helpful.

MS. BROTBACKER Mr. Schneider, I'm handing you what has just been marked as Exhibit Number 6.

Q Do you recognize Exhibit Number 6?

A I mean, not specifically. It's just. one of the documents that I produced here today. I mean, it's one or

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the documents that we reviewed at the time.

Q From where did you receive Exhibit Number 6?

A I don't recall.

Q What work, if any, did you do on Exhibit Number 6?

A . Just what I said earlier.

Q Which is "reviewed Exhibit Number 6"?

A Right. Went over it, studied it, compared it with others, compared it with the law that I had researched, compared it with the articles written by experts of what should be in and out and discussed it with the other lawyers and some people from Fidelity.

MS. BROTBACKER: Mr. Schneider, I'm handing you what has just been marked as Exhibit Number 7.

Q Do you recognize Exhibit Number 7?

A This is one of the ones I gave you in response to the subpoena.

Q From where did you receive Exhibit Number 7?

A I don't remember.

Q Do you recall why you received Exhibit Number 7?

A Again, my best recollection is that this is one of the things they told me to look at as a model, or for purposes of comparison, for purposes of education and familiarity with the type of documents we're dealing with here.

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Q Who told you to look at this?

A I don't remember. Obviously somebody from MaCarter & English.

MS. BROTBACKER: Mr. Schneider, I'm handing you what has just been marked as Exhibit 8.

Q Do you recognize Exhibit 8?

A I think this is another one which I produced to you pursuant to the subpoena, and it appears to be one of the ones I had at that time.

Q At what time?

A June of '89, I guess, when I was doing this.

Q From where did you get Exhibit Number 8?

A I don't recall.

Q What work, if any, did you do on Exhibit Number 8?

A The work I did on all these is the same as I've testified to.

MS. BROTBACKER: Please testify again as to what you did specifically on Exhibit Number 8.

THE WITNESS: I can't tell you specifically what I did on 8 other than generally what I did on

all of the documents as it relates to what I was called upon to do by First Fidelity.

Q Is it your testimony that you reviewed this document?

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A Yes.

Q And f or what reason were you reviewing this document?

A I reviewed any and all of these documents to determine whether or not the -- they included what they should, and did not include things they shouldn't include, and to look for just what I was told to look for and what the law requires me to look for. Specifically, I don't recall.

Q When did you receive this document in relation to the bond issue?

A I don't remember.

Q Was it prior to or after the bond issue closed?

A I don't recall. I would assume prior, but I don't know.

Q So, it's possible you received it after the bond jssue closed?

A I don't know. I mean, I don't know. It's -- as I said, it's six years ago. I don't remember when I got this particular document. I just assume it was before.

Q Why are you assuming it's before?

A Well, it wouldn't do me much good after. Some of these I did keep in the file. I gathered

as many as I could and I put them in this envelope, I guess, because when I went through my boxes of stuff —— it's sort

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of like a brief bank is why I get these.

THE WITNESS: Do you know what a brief bank is?

MS. BROTBACKER: No.

THE WITNESS: When you write briefs over the course of the years :in practicing law you save copies in case you can use them in the future.

MS. BROTBACKER: I'm handing you what has just been marked as Exhibit Number 9.

Q Do you recognize Exhibit Number 9?

A Only as one of the things that I found in my box that I prcduced to you pursuant to the subpoena.

Q From where did you receive Exhibit Number 9?

A I don't recall.

Q From whom did you receive Exhibit Number 9?

A I don't recall.

Q When did you receive Exhibit Number 9?

A I don't recall.

Q What work, if any, did you do on Exhibit Number

9?

A Same type of work I did on everything else.

Q Which is "reviewing the document"?

A Which is studying, reading it front to back, studying it, comparing it to others, comparing it to my legal research that I did, comparing it to advice and instructions from other lawyers, particularly the MaCarter &

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English guys.

Q Did you recommend to anyone any changes that needed to be made on Exhibit Number 9?

A I don't remember.

Q Did you recommend to anyone any changes that needed to be made on Exhibit Number 8?

A I don't remember what recommendations I made at the time.

Q Did you receive an agreement among underwriters with respect to this transaction?

A I don't remember.

Q Do you recall any of the documents that you received with respect to this transaction?

A No.

Q Had you done any work on any municipal securities transactions prior to this Essex County issue?

A No.

Q Have you done any work on any municipal securities transactions since this Essex County issue?

A I don't believe so.

Q As you sit here today, do you recall whether you received any docu.ments with respect to this bond issue prior to the issue actually having closed?

A Well, you tell me not to guess. I'm not supposed to assume. I don't have specific recollection of these

events that happened -- you know -- in early 1989 I mean, I remember receiving a lot of documents, a lot of paper work to read and go over and I remember discussing it with other people, other attorneys, discussing with the bank people a couple of times, researching, going to the library and lookifl at things and trying to learn this business. As I found out, it really wasn't that complex because it's boiler plate. That's the only thing I came out of this thing knowing. As to exactly what I did and when I did it, I honestly can't say. It's too far back.

Q What, if anything is your understanding as to why First Fidelity approached you to do work on this bond issue?

A I guess you have to ask them. I don't know. Maybe they thought I could handle it.

Q So, then your answer is you have no understanding as to why they approached you to work on this bond issue?

A I can't tell you what their mental state was or why they called me.

Q No, my question is not what their mental state was.

My question is what is your understanding or belief as to why First Fidelity approached you to do work on this bond issue?

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A I don't have any.

Q Are you familiar with a. Joseph Galluzzi?

A Yes.

Q When did you first meet Joseph Galluzzi?

A First met Joseph Galluzzi probably 1981 when I prosecutor of Essex County.

Q As of January 1, 1989, what, if anything, was your relationship with Mr. Galluzzi?

A There was no relationship.

Q Did you see him on a business level, social level, ornot at all?

A See him rarely.

Q Approximately how often in a year did you see him between 1985 and 1989?

THE WITNESS: From '85 to '89 how many times did I see him?

Q In 1985 do you recall approximately how many times you saw him?

A Oh, I have no idea.

Q '86?

A. I have no idea.

Q. '87?

A,' Not much Maybe four times a year.

Q Were they on social or business matters that YOU saw Mr. Galluzzi?

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A I would say mostly -- well, I shouldn't say "mostly." I was going to say "mostly social" but probably more related -- in that period of time when I was prosecutor relating to budget matters with the County, I would think.

I believe Joe had a position with the County that had something to do with finances and -- I don't know if he was treasurer at the time or he had something to do with finances at the time, and I, as County Prosecutor was responsible for my budget, which was about $14,000,000, and I had to go before the board of freeholders to get approval of the budget every year, and I believe Joe played a role in there somehow with the numbers.

Q Are you familiar with a Ray Durkin?

A Sure.

Q Who is Ray Durkin?

A He's my cousin.

Q Did you ever have conversations with Mr. Durkin concerning the Essex County bond issue in 1989? A No.

Q Did you ever have conversations with Mr. Galluzzi concerning the Essex County bond issue in 1989?

A No.

MS. BROTBACKER Let's take a brief break.

THE WITNESS Sure.

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(Whereupon a brief recess *was* taken.)

MS. BROTBACKER: Back on the record.

Mr. Schneider, while we were off the record, did you have any conversations of a substantive nature with any members of the Commission's staff?

THE WITNESS: No.

Q Were you paid for your work on the Essex County transaction?

A Yes.

Q How much were you paid?

A I believe it was $20,000.

Q When did you find out how much you were going to be paid?

A I think sometime during the -- durincr the early discussions of my duties, responsibilities, et cetera.

Q How did you find out?

Who told you?

A I guess one of the Fidelity guys must have told me.

Q Do you remember who?

A No. I don't .

Q Did you have to submit an invoice in order that you receive payment on this transaction?

A I don't remember. Probably, but I don't remember.

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And did you actually receive money?

A I actually received money. I received a check for, I believe, $20,000

Q Do you have in your possession or control a **copy** of that check?

A No.

Q Do you know where you deposited that check?

A In my lawyers -- attorney account.

Q Where do you maintain bank accounts?

THE WITNESS: Now or then?

Q Where did you maintain bank accounts then?

A I have to think now. Let's see. I was probably at UJB or NatWest, whatever bank was at the Gateway at that time in 1989. Gateway one -- there was a bank on the first floor. I think that's the bank I did business with. Either UJB, United Jersey Bank, or NatWest, I believe was there.

Q Do you know what -

A (Continued) -- It's still there, so it's easy to find out, but I don't recall.

Q -- Do you recall what the name of the account was in wbich you deposited the check?

A George L. Schneider, attorney at law. It's my attorneys account.

She only had it for about six months or so, because that's as long as I was there at that location

before I formed this new partnership.

Q You testified earlier that you weren't sure when you received any of the documents that you produced to us.

Is that correct?

A That's right.

Again -- make it clear —— these documents after I received your subpoena I went looking through whatever I could find, going back to 1989, and I found an envelope with a lot of -- well, this is what I fcund - those docarnents in there -- and I assume I kept that as a. -like a brief bank type thing in case I ever wanted to look at in the future. If I want to look what these things look like I won't have to ask people "Send me one of those"-- -some of those I have. As it turned out, I never needed them again, but that's probably why I kept them. But when I got them? I c:an't say when I got them.

Q The transaction closed on June in June of 1989, as set forth in Exhibit 3.

Is it possible that you received documents concerning this transaction after the deal had c:losed?

A I doubt it.

I wouldn't need anything after it was; closed.

THE WITNESS: It closed June what?

MS. BROTBACKER: If you look at Exhibit 3, I believe it says "June 1989."

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THE WITNESS: It doesn't say what date.

MS. BROTBACKER: "June 7", I believe, it says on the bottom of Exhibit Number 3.

Mr. Schneider, I'm handing you what has been marked as Exhibit Number 10.

I ask you to look at Number 10 and tell me whether it refreshes your recollection as to any conversations you had with Mr. Galluzzi or when you received documents on this transaction?

THE WITNESS: This is apparently a letter of November 20, '89 to me at my new law office on Passaic Avenue in Fairfield from Joseph Galluzzi.

Q Do you recognize Exhibit Number 10?

A Well, I recognize it as what I just said it was.

Q Do you recall having seen Exhibit Number 10 at any time prior to today?

A No. I don't remember this letter.

Q Is there anything in Exhibit 10 that refreshes your recollection as to any conversations you had with Mr. Galluzzi concerning the Essex County transaction?

A I think this -- yes. There is something that I remember here, where it says "John Sally" here.

I think they were going to give me another one to do at the end of the year when I was with my new firm. I think that's what this was about. That's my best

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recollection. .

Q Another bond transaction?

A I think so. I don't think this is related to the one I did in June at all.

Q And why do you think that?

A Because I remember towards the end of the year talking to John Sally about doing another one because we commented about -- I did anyway -- about I always thought these things were such a big deal, so complex. In fact they're not, they're boiler plate. I mean, those guys -- the lawyers that do that make an awful lot of money doing it, and they didn't like me saying that.

Q Approximately when did you have this conversation with Mr. Sally?

A That was after, well after the first one, and this may tie into that. I don't remember for sure, but this says "November 20, '89." It might tie into, that contact I had with Sally then.

Q But you don't recall whether it ties into that or not?

A That's my best recollection.

So we're clear, the end of the year, months after the one for which I got paid and did the work, there was some contact with these people about doing another one.

Q What people?

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A Sally.

Q Who contacted you?

THE WITNESS:Apparently Galluzzi sent me stuff. Why he sent it to me? I don't know.

Q Do you recall having any conversations with Mr. Galluzzi concerning doing any work on any Essex County bond issue at any time?

A Well, this probably would indicate that I did have some conversations -

Q No.

My question is do you recall having any conversation with Mr. Galluzzi?

A No. No.

This is refreshing me, but vaguely, about the end of that year, after the first one.

Q That refreshes you as to a conversation you had with Mr. John Sally of MaCarter & English concerning doing another bond transaction?

A Yes.

Q Do you recall what bond transaction was coming up?

A No. No. I do not.

Q Do you recall whether there was in fact any refunding bond issue coming up?

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I only recall if I did it. I don't think I did I might have done something, but nothing -- not near as much work as I did the first,-- I don't know whether i did anything on this or not.

Q Do you recall ever actually receiving any bond purchase agreement, preliminary Blue Sky survey agreement among underwriters in or about November of 1989?

THE WITNESS: Today?

MS. BROTBACKER: Yes.

THE WITNESS: In June of 1989 if I remember what I got in November of '89?

A No. I do not.

I'm not saying I didn't, but I don't remember.

Q Did you have any follow-up conversations with Mr. Sally concerning doing any bond work for Essex County?

THE WITNESS: Any what conversations?

Q Any, follow—up from what conversation you just testified about?

A No. I don't remember.

I remember that brief informal conversation about what it's like to be a bond or underwriting attorney, and that would have, been it well after I did it, because that's what it was about. That's why we discussed it. This is probably what prompted me to have that conversation with. John Sally. They make hundreds of thousands of dollars for

doing -- I thought what I did -- which is boiler plate and they-- -- they didn't like me making that kind of comment That wasn't malicious or they weren't mad or anything, but they -- they didn't get the -— I mean, some cases in a practice the law -— I don't know if you've ever been in private practice, but you could make a lot of money for very little work as a lawyer. On. same cases you put in a ton of work and you end up getting stiffed, and I always thought that this type of work; was the type of work where these guys all had it in their computers -- big firms —— and banged it out and, God Bless them, they did very well at it. That was the type of conversation I remember having with Sally.

Q Was the work that you did on the Essex County transaction as an underwriters counsel or as a bond counsel?

A Underwriter, I believe.

I put them both in the same category as far as what has to be done. It's all repetition.

MS. BROTBACKER: I have no further questions at this time.

Should it be necessary for me to speak with you again, I will contact you.

Is there anything that you'd like to add or clarify for the record?

THE WITNESS: Just one thing.

One question that you asked me -- if I ever done

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one of these before, as though it's something extraordinarily complex and something that I wouldn't be competent to do. Some of the other things I've done in my career are a lot more difficult than this. I never tried -I never prosecuted a death penalty case before my first one. I never prosecuted a serious medical malpractice case before I did the first one, and they were very difficult. Much more complex than this. Big bank fraud cases. You always do a first one. This is, in my opinion -- I don't want to degrade or minimize what these bond counsels do, but I think it's a lot easier than a lot of things I've done for which I've made less and more money.

MS. BROTBACKER 'Anything else?

THE WITNESS: No. That's all.

MS. BROTBACKER We're off the record at 11:32 a.m.

(Whereupon, at 11:32 a.m., the record in the above-entitled matter was adjourned.) .

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U.S. SECURITIES AND EXCHANGE COMMISSION

In the Matter of Certain

Municipal Securities Transactions

Thursday
November '3, 1995

Securities and Exchange
Commission
7 World Trade CEnter
Hew York, Hew York 10048

The above-entitled matter came on for

investigation at 10;10 a.m.

APPEARANCES

On behalf of the Securities and Exchange

Commission:

TERI BROTBACKER, ESQ.
WILLIAM JOHNSON, ESQ.
MS ELIZABETH BAIER,
Staff Examiner
Securities and Exchange Commission
7 World Trade Center
New York, New York 10048

On behalf of the witness:

FREDERICK V LOCHBIHLER, ESQ.
Chapman and Cutler
11West Monroe Street
Chicago, Illinois 60603

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Essex County would do and obviously we knew that they issued tax anticipation notes. We knew that they Would be coming, but as on this financing and all the other financings, we were chosen by Essex County to do this.

Q How did you find out that A.G. Edwards **was** chosen to do this note **issue?**

A We would receive a call from the County.

A Who from the County?

A don't —— I don't recall who —— what. I would not have received the call. This call would have gone to the manager of the office or to **a** technical person in the office. I'm not sure who made the call.

O Did there come a time in 1990 when the Essex County Improvement Authority issued approximately $63 million dollars in bonds?

A Yes.

(Exhibit Number **4** was so marked for identification.)

MS. BROTBACKER: Mr. McDonough, I'm handing you what's just been marked as Exhibit Number 4. It's a copy of a portion of an official statement concerning the bond issue by the Essex County Improvement Authority in July of 1990.

on the July 1990 bond issue by the Essex County Improvement Authority?

A Again, most of my time was spent and my responsibilities was spent -- time was spent going to meetings and I until this day go to almost to every Essex County Improvement Authority meeting. There was discussed at a meeting that a financing was being contemplated Again, I relayed our message to our people in our office and I believe they contacted the Improvement Authority We do what they call run numbers for them, help them obtain initial structure, which is all pro bono work, and I think as a result of that, they asked A.G. Edwards to be part of this financing.

Q Approximately when did you first find out that the ECIA was contemplating doing a bond issue?

A I don't recall. It was probably at one of the meetings prior, obviously prior to the issuance of these bonds, but they start talking about issues anywhere from a year to six months before they do them.

Q Without giving me an exact time as to when you first learned, can you give me an approximation as to how far in advance the actual bond issue you discovered that the ECIA was contemplating doing a bond issue?

A I can't give you a time. My recollection is that there was a short period of time on this one, but it may

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have been six months before prior to this.

Q Were you employed at A.G. Edwards or Ehrlick Bober when you first began to work on this bond issue?

Athis financing I was in -- when it was first contemplated I was with Ehrlick Bober. That's correct.

Q Who from Ehrlick Bober worked with you on this bond issue?

A A fellow by the name of David Hack and I believe David Brownstein was involved in this financing also.

Q Are you aware whether any other underwriters approached the Essex County Improvement Authority concerning working on this bond issue?

A I'm not aware of that, no.

Q Who from the Essex County Improvement Authority did you first have contact with concerning doing this bond issue?

A I'm sure it was the executive director, a by the name of Tom Banker. He' mentioned there, but that's -- he is the executive director and he is the one that makes most of the recommendations to his board in terms of who should do the financings.

Q Did you or anyone else from Ehrlick Bober make any presentations to Mr. Banker concerning yowr firm?

A We were asked for I don't think it was an official R&P, but we were asked for credentials of our firm

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when we left from, left Ehrlick Bober and went to A.G Edwards, and there was a -- there was a time that we were asked to supply information with regards to the firm. I don't think it was a specific R&P. I'm not sure to. tell you the truth, whether a specific R&P for this financing or not, but they did ask for a statement of qualifications.

Q At the time that you left Ehrlick Bober and went to A. G. Edwards, had Ehrlick Bober already been chosen as a lead . underwriter for this transaction?

A No, I don't believe so.

Q

MS. BROTBACKER: We're going to go off the record.

THE WITNESS: Okay.

(Whereupon, a recess was taken.)

MS. BROTBACKER: Back on the record.

Mr. McDonough, while we were off the record, did you have ary conversations of a substantive nature with any members of the Commission's Staff?

THE WITNESS: No.

MS. BROTBACKER Exhibit Number 5.

(Exhibit Number 5 was so
marked for identification

MS. BROTBACKER: Mr. McDonough, I'm handing you what has just been marked as Exhibit Number 5.

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Q Please take a moment to look at it and tell whether it refreshes your recollection as to whether Ehrlick Bober had been selected as the lead underwriter prior to your leaving that firm?

THE WITNESS: I'm sorry, and your question is?

MS. BROTBACKER: Whether that refreshes your recollection as to whether Ehrlick Bober was selected as the lead underwriter prior to your switching to A. G. Edwards.

MR. LOCHBIHLER Do you have a date in mind when you switched to A.G. Edwards?

THE WITNESS: When I switched to A.G. Edwards?

MR. LOCHBIHLER: Yeah.

THE WITNESS: No.

MR. LOCHBIHLER I mean looking at the date on Exhibit 5, April 18th was it before or after? Can you place it?

THE WITNESS: Before or after this date?

MR. LOCHBIHLER Yeah.

A Well, it must have been before because 200 West State Street is the -- is -- we actually took over the office from Ehrlick Bober which was 200 West State Street.

Q Do you have any recollection as you sit here now that Ehrlick Bober was chosen to be the lead underwriter on this transaction at any time?

A I have recollection that they were officially

appointed as the lead underwriter. At Ehrlick Bober all I'm referred to the local finance board and I'm not sure if if the -- January, February March, April -- if the local finance board application had Ehrlick Bober or had A.G. Edwards as the lead manager or if they had anybody in there at any time.

Q Do you recall having any discussions with anyone, including Mr. Banker, as to whether the Essex County Improvement Authority should work with A.G. Edwards rather than Ehrlick Bober on this bond transaction?

A No, the Improvement Authority was incredibly impressed with the fellow that I mentioned and who actually came over from Ehrlick Bober to A.G. Edwards and that was David Brownstein, and I think we had started working on this financing, David did, when he was at Ehrlick Bober, and I think that; when it -- when we went over to A.G. Edwards, his expertise carried with him, not necessarily with the company and that's why I think that there was a, according to this, there was a change, but as -far as actual official award as Ehrlick Bober as the senior manager I don't remember that. I don't recall that.

MR. LOCHBIHLER': Just for the record, have you ever seen this document before?

THE WITNESS: I don't recall seeing this document before.

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MS. BROTBACKER You're referring to Exhibit Number 5?

MR. LOCHBIHLER: Five.

THE WITNESS: Five. Again it was sent to 200 West State Street. I may have seen it. I don't recall seeing it.

Q Did you deal with anyone from Essex County on the Essex County pre—inventory bond transaction?

THE WITNESS: On the Improvement Authority bond transactions?

MS. BROTBACKER: Yes.

A The staff at the County was involved in that because this particular financing included —— included improvements to the County itself. So there was input from the treasury staff at the County.

Q Who from Essex County did you deal with?

MR. LOCHBIHLER: Hold it. Do you mean you A.G. Edwards or -

MS. BROTBACKER: -- Oh, now I'm asking specifically you.

MR. LOCHBIHLER: Oh. Do you have the question in mind?

THE WITNESS: Yeah.

A Again, I was not involved in any of the technical part of this financing. That would have been David

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Brownstein or somebody on David's staff.

Q My question is who from Essex County did you deal with on this transaction?

A I dealt with the Improvement Authority on this transaction..

Q Did you have any contact with anyone from Essex County on this transaction?

A The then treasurer I believe was Torn Jordan or deputy treasurer we had -- I had some contact with and Richard Loewack who was on the treasury staff, Joseph Gualluzzi. I'm not sure if Joseph Gualluzzi was in place. I think Joseph was there at this time. So there was conversations with him also.

Q Anyone else?

A That's all I can recall.

Q When did you first have contact with Mr. Jordan with respect to this bond transaction?

A I don't -- I can't recall when exactly that was.

Q On what type of issues did you have contact with Mr. Jordan?

A Just basically telling him about A.G. Edwards, who A.G. Edwards was at that time, and then prior to that, who Ehrlick Bober was and what we did.

Q Was this an in person meeting or over the phone?

A I think it was both. I think there were

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conversations both in person and over the phone.

Q When you met with Mr. Jordan in person, was anyone else there?

A David Brownstein may have been at that meeting. David Hack may have been at that meeting. I don't recall.

Q What about Mr. Loewack, what type of issues did you discuss with him?

A The same type of thing, about who A.G. Edwards is or capabilities what we can do, and the same thing with Ehrlick Bober about what we could do and basically it was an introduction to —— from —— to Mr. Loewack and Mr. Jordan and whoever else to our technical people, such as David Brownstein or David Hack.

Q Was your discussions with Mr. Loewack in person or over the phone?

A Both.

Q Was anyone else there when you spoke with Mr. L o e w ack?

A He's in an office with several people. His assistant I believe was there whose name I don't remember. His first name is Sal. I'm not sure what his last name is.

Q What about with Mr. Gualluzzi, what was your contact with him?

A Basically the same thing, telling him who A.G. Edwards was, who Ehrlick Bober was and the kind of things we

can do.

Q. Was this in person or over the phone?

A Both.

Q Was anyone else there when you met with him in person?

A Yeah, I think the same people from our staff were there, David Hack, David Brownstein. I don't believe there was anybody else from his staff. A fellow by the name of Joseph Auriemna who was -- I don't know if he was treasurer at the time or not. Treasurer, Joseph Auriemna. Yes, he was involved with Torn Jordan and was moved down. Tom Jordan was the treasurer and then he was moved to the comptroller position

Q Did you make any presentations to Mr. Auriemna?

A Introductions of our people to Joe Auriemna, yes.

Q Similar to the ones made to Mr. Jordan, Mr. Loewack and Mr. Gualluzzi?

A Yes.

Q Were these -- was this in person or over the phone?

A Both.

Q Were the same people there?

A Yes.

Q Did you have a primary contact or do you personally at Essex County on this bond transaction?

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A No.

Q Approximately how much contact did you have with Mr. Jordan on this bond transaction?

A I may have attended some of the work meetings, the work group meetings or go to the free holder meetings. I would see him there, but that's basically it.

Q What about Mr. Loewack?

A Very limited contact there because he really worked for Mr. Jordan. He did a lot of the back—up work for Mr. Jordan and Mr. Auriemna.

Q And what about Mr. Gualluzzi?

A The same thing. He was at this time he was a consultant to the County Executive who was not the treasurer anymore. So he was -- he wasn't as present as the treasurer Auriemna was and Jordan and Loewack.

Q Approximately how much contact did you have Mr. Auriemna?

A Not —— again not a whole lot Just an occasional phone call just to say hello, how are you doing, how are we doing, that type of thing.

Q What is your understanding as to what the other individuals at —— strike that. Are you aware whether anyone else from A.G. Edwards was having more frequent contact

with either Mr. Jordan, Mr. Loewack, Mr. Gualluzzi or Mr. Auriemna?

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A Yes——

MR. LOCHBIHLER: -- In connection with this

MS. BROTBACKER: -- in connection with these signings.

THE WITNESS: These signings.
BROTBACKER: Yes.

A--Yes, I think at this time, David Brownstein, who was the lead banker, was -- almost all the contact was done through Mr. Brownstein and this was done at work session meetings. Again who from the County was there, I don't know because I didn't attend those meetinqs, but usually there was bond counsel represented from the County, County represented from the Improvement Authority and ourselves and our counsel at the time. So that's usually was the make—up of a work session meeting. How many work session meetings took place, I don't know, but to answer you- r question the main contact would have been David Brownstein.

Q Was there a financial adviser for the Essex County Improvement Authority on this bond transaction?

A I don't recall. It would be in here. It should be on the official statement if there was. It doesn't look like there was.

Q Turn to the fifth page of Exhibit Number 6 —— no, Exhibit Number 4?

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A Okay, I believe they were financial consultant to the Authority and would have had input into this issue also, yes, but I don't think they were hired specifically this Issue. I don't know.

Q What is your understanding as to how Consolidated Financial Management came to be the financial adviser to the Authority?

A I don't know that.

O What is your understanding as to what Mr. Gualluzzi's role was in Consolidated Financial Management becoming the financial adviser to the Authority?

A That's two questions. Is that right? I already said I don't know how Consolidated Financial Management came in. Joseph Gualluzzi I don't think was a financial consultant to the Improvement Authority. I think he was a consultant to the board of free holders or to the County Executive

Q Did you ever attend a meeting where Mr. Gualluzzi discussed Consolidated Financial Management?

A No.

Q I'm going to represent to you that you attended a meeting Thomas Banker and Joseph Gualluzzi where Mr. - where the subject of Consolidated Financial Management was discussed. Do you have any recollection of that meeting?

A I don't have any recollection of that meeting.

MR. LOCHBIHLER: Do you have a time or place or something? -

MS. BROTBACKER: I believe it was sometime in either 1989 or 1990.

THE WITNESS: And the specific —— the -- it was specifically to talk about Consolidated Financial Management? -

Q My question is whether you recall-- -

A -- Okay, I do not recall that. It may have taken place, but I do not recall it.

Q Do you -recall in any context hearing Mr. Gualluzzi discuss Consolidated Financial Management?

A No, they we-re not active, very active in Essex County at all and A.G. Edwards and Ehrlick Bober both for that matter had very little contact at all with Consolidated Financial Management.

Q What was your understanding of what Mr. Gualluzzi's role was on the ECIA bond issue?

A His role was to advise the County Executive as to what was taking place. He would be involved, I guess, in some of the sessions and then would report back to the County Executives as to how that particular financing was going.

Q What was .your understanding as to how much input Mr. Gualluzzi had with respect to the ECIA bond issue?

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A I'm not sure he had any -- that much impact at all. The ECIA chose its own investment bankers.

Q How do you know that?

A Because they have an -- they go through RFP process. They have a board that approves those -- the selection of all the professionals.

Q What is your understanding as to who reviews the responses to the RFP's?

A My understanding it's the executive director.

Q And from where do you get that understanding?

A Just I believe I've been told that.

Q By whom?

A By Mr. Banker.

O Do you have any understanding as to anyone from Essex County had any input as to who would be chosen as lead underwriter on this bond transaction?

THE WITNESS: Did the County itself have any -

MS. BROTBACKER: — I'm asking you whether you had any understanding as to whether the County itself or anyone advising the County had any input into who would be chosen lead underwriter on this bond transaction.

A Yes, I think the County had some input into it.

Q What is your basis for that belief?

A By the fact thatthe County Executive had representation at the meetings and had representation at the

Improvement Authority. I'm Sure that they had input into the selection of some of the professionals.

Q Did anyone ever tell you, did you ever hear that anyone from the County or anyone advising the County had any input as to who would be lead underwriter on the ECIA bond issue?

A No.

Q Are you familiar with a Robert Brown?

A Yes.

Q Who is Robert Brown?

A He's an attorney from the City of Orange and he's also a mayor in City of Orange.

Q What, if anything, was Robert Brown's role in the ECIA bond transaction?

A He was brought in to be a co—counsel on the —— I'm not sure what financing he was involved in, but he was co—counsel. It was not unusual to have to co—bond counselor or co—underwriters counsel on some of these financings.

Q Which was he, co—bond counsel or co-underwriters counsel?

A I believe he was co—underwriters counsel. I'm not sure of that though. I should strike that. I don't -he could have been either one.

Q How did Mr. Brown come to be co—counsel on this bond transaction?

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A That I believe was a recommendation from the County.

Q Who from the County?

A It came from the County Executor's 0ffice

Q Who from the County Executor's Office?

A Again, I think you -- I don't know that. That came to me through David Brownstein who was structuring the financing, but I believe that it did -- came from the County Executor's Office.

Q What did Mr. Brownstein specifically tell you concerning how Mr. Brown was chosen to work on this bond transact

A No, he told me that we would have co—bond counselor, co-underwriter There would be a co—bond counselor. There would be a co-underwriters counsel on a particular financing.

Q Did he tell you who at the time that he told you there was going to be a co—counsel on the bond transaction?

THE WITNESS: Who it was?

MS. BROTBACKER: Yes.

A Yes.

Q What did he say to you?

A He said in this particular financing it would be, I'm not sure if he was co—bond counsel on this one or not, but there would be a co—bond counsel and his name was

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Robert Brown.

Q Had you met Mr. Brown at that time?

A Had I met? a mayor level I knew Mr. not on a professional level.

Q At the time that Mr. Brownstein came to you and told you that Mr. Brown was going to do work on this ECIA bond transaction, was that the first time that you heard that that was even a possibility?

A Yes.

Q What, if anything, did you say in response to Mr. Brownstein telling you that Mr. Brown was going to work on this bond transaction?

A I was surprised.

Q Did you say anything to him in response?

A No, I just said -- why, and he said that it's the County that's requesting that we use Mr. Brown as a co—bond counsel or co-underwriters counsel.

Q Did Mr. Brownstein tell you who from the County had made this request?

A No.

Q Did you ever hear who made this request?

A No.

Q Did you ever have any discussions with anyone as to how Mr. Brown was, beyond the conversations you just described with Mr. Brownstein, did you ever have any

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conversation with anyone as to how Mr. Brown came to work on this bond transaction? -.

A No, I think his role was *very* minimal. So I'm not sure, you know, to what extent those conversations took place. Again I was not privy to those

Q What, if anything, is your understanding of what Mr. Brown did on this bond transaction?

A My understanding he reviewed documents. I know documents were sent to him.

Q How do you know that documents were sent to him?

A Because I was -- I asked -

Q -- Who did you ask?

A I asked David Brownstein.

Q What did you ask him?

A I asked what is -- what will Mr. Brown's role be and he said he'll be reviewing documents.

Q Did Mr. Brownstein tell you what documents he'd be reviewing?

A No.

Q Did there come a time that you learned what documents Mr. Brown would be reviewing?

A No.

Q Is that the sole basis of your understanding of what Mr. Brown did on this bond transaction? .

A Yes.

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Q Did you ever have any contact with Mr. Brown on this bond transaction?

A No, I would see him throughout. He's involved in politics as I was. I would see him. He would tell *me* that he's working on this transaction.. He —— he asked the the City of Orange was going to be doing a financing through the Improvement Authority. He asked if we wanted to be involved in that. I said yes, which we subsequently were not, but I mean I would see him around, but not --' we would not specifically -- I had no idea what exactly what he was doing on this one, on this.

Q Did Mr. Brown ever give you any idea as to what he was doing on this bond transaction?

A No.

Q What is *your* understanding as to who compensated Mr. Brown on this bond transaction?

A A.G. Edwards compensated him I believe.

Q And how did that come about?

Q Well, again I believe he was underwriters counsel and A.G. Edwards pays underwriters counsel, co—counsel, and as lead underwriters usually the -- pays most of the expenses through their accounts, through the lead underwriter's accounts.

Q Did you attend any meetings with underwriters counsel on this bond transactions?

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THE WITNESS: Which -- which Brown was at or any underwriters-- --

MS. BROTBACKER:—— Any underwriters Counsel?
A I did attend some meetings. To my recollection Bob Brown was never at any of those meetings.

Q Do you have any understanding as to why Mr. Brown was not at those meetings?

A No, I don't

Q Did you ever ask him why he wasn't at those meetings?

A No.

Q Did Mr. Gualluzzi ever ask you if Ehrlick Bober or A. G. Edwards could pay on the finders fee in connection with the ECIA bond issue?

A No.

Q Did Mr. Gualluzzi ever ask you if Ehrlick Bober **or** A.G. Edwards could pay him any money in connection with the ECIA bond issue?

A No.

Q Did you ever hear Mr. Gualluzzi had asked anyone at Ehrlick Bober or A.G. Edwards could pay him a finders fee in connection with the ECIA bond issue?

A No.

Q Did you ever hear whether Mr. Gualluzzi had asked anyone at: Ehrlick Bober or A. G. Edwards could pay him any

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money in connection with the ECIA bond issue?

A No.

Q Did you ever discuss with Brad Sprague whether Ehrlick Bober could pay Mr. Gualluzzi a finders or consultant fee in connection with the ECIA bond issue?

A No.

Q Did you ever discuss with Brad Sprague whether Ehrlick Bober could pay Mr. Gualluzzi any money in connection with the ECIP bond issue?

A No.

Q Did you ever hear whether anyone had discussed with Mr. Brad Sprague the issue of paying fir. Gualluzzi any money in connection with the ECIA bond issue?

A No.

Q Are you familiar with a Steven Pearlman?

A Steven Pearlman? Yes..

Q Who is Mr. Pearlman?

A He' s an attorney for the Essex County Improvement bond counsel.

Q Did Mr. Peariman have any involvment on this

ECIA bond issue?

A I believe they were bond counsel, yes.

Q Did you have any contact with Mr. Pearlman on the ECIA bond issue?

A Not, other than seeing him the Improvement

Authority meetings.

Q Did you ever ask Mr. Pearlman whether a consultant's fee could be included in the expenses with the ECIA bond issue?

THE WITNESS: Did I ever say that again?

MS. BROTBACKER: Did you ever ask Mr. Pearlman whether a consultant' s fee could be included in the expenses for the ECIA

A Absolutely not.

Q Did you ever hear anyone ask Mr. Pearlman whether a consultant's fee could be included in the expenses on the ECIA bond issue?

A No.

Q Did you ever hear that anyone had asked Mr. Pearlman whether a consultant's fee could be included in the expenses on the ECIA bond issue?

A No.

Q Did A.G. Edwards pay Mr. Gualluzzi a finder's or consultant's fee directly or indirectly in connection with the ECIA bond issue?

A No.

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Off the record.

(Whereupon, a recess was taken.)

MS. BROTBACKER: Back on the record.

Mr. McDonough, while we were off the record, did you have any conversations of a substantive nature with any members of the Commission's Staff?

THE WITNESS: No.

MR. LOCHBIHLER: Mr. McDonough would like to say something more that he recalled about the conversation that he had with Mr. Brownstein about Mr. Brown. Is that okay?

MS. BROTBACKER: That's fine. Go ahead.

THE WITNESS: Yeah, just that as I said that I did question the fact that Mr. Brown was being put on a particular financing. Again I don't remember whdt financing it was at that time. The explanation that I was given was that Mr. Brown wanted to become a red book firm. The way that he became a red book firm would be to start working as co—bond —— co—underwriters counsel and work his way up and that it was —— it was my understanding that the County Executive had signed off on that and asked us to use Mr. Brown as a co—underwriters counsel or co—bond counsel. I'm still not sure which one he was.

Q And is your understanding based on the conversation with Mr. Brownstein?

A Yes.

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Q In your experience as an underwriter, do you ordinarily have to get a County's approval to use ah underwriters counsel?

A We didn't seek approval. We were told -- we were requested to use a underwriters -- a co-underwriters counsel and that is -- that is normal practice or it is practice that issuers will ask underwriters in your selection process please give this person consideration for an underwriters counsel.

Q What is your understanding as to who from the County was making this direction?

A The County Executive.

Q So based on your conversation with Mr.. Brownstein, it was your understanding that Nicholas Amato was directing your firm to use Mr. Brown as a counderwriters counsel?

A That's correct. I learned later that Mr. Brown and Mr. Amato were —— I mean they're both in politics and that they were friends and Mr. Amato would have been —— he's the one that made that suggestion.

Q You're speculating as to this, is that correct?

A I'm speculating, yes.

Q Has A. G. Edwards ever had a business relationship with Mr. Gualluzzi?

A. Yes

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Q When did you first have any discussions with anyone concerning A.G. Edwards having a relationship with Mr. Gualluzzi?

A It was after he left the County and went back to his original practice. Then we started to do more and more complicated type financings in the State of New Jersey and we approached Mr. Gualluzzi to see if he would be interested in consulting on some of those financings.

Q When you say it was after Mr. Gualluzzi left the County, are you referring to his position as treasurer or as a financial consultant?

A Both, and the-re was no -- we weren't very clear to -- A.G. Edwards would never employ anybody where there was a conflict involved. As a matter of fact, we terminated Mr. Gualluzzi's arrangement with A.G. Edwards because we perceived a conflict when he was appointed down at a state authority.

Q Approximately how long after Mr. Gualluzzi ceased to be a financial consultant to Essex County did you first approach him concerning doing work for A.G. Edwards?

A That was in -- I don't know exactly when that was, but it was in the realm of a couple of months, two or three months.

Q Are you the individual from A.G. Edwards that approached Mr. Gualluzzi?

A Yes.

Q When you first approached Mr. Gualluzzi, what did you say to him about a relationship and what did he say in response?

A I asked him if he -- if he had any time or would he entertain being a financial consultant to A.G. Edwards down the road in helping us structure, at that time I recall fiscal year adjustment bonds, which was a type of financing that he was very familiar with that we were doing and our competition was doing more of than we were doing, and I asked him if he would be interested in consulting to our firm, and he said yes that he would be interested.

Q Where did this initial conversation take place?

A I don't remember that.

Q Was there anyone else there?

A The initial discussion, it was -- again I'm speculating, it was -- I'm sure it was just between -- I'm pretty sure it was just between Joseph and myself.

Q During the initial conversation, did you ask Mr. Gualluzzi whether he would help you on fiscal year adjustment bond transactions?

A Yes and others.

Q You stated a moment ago that the 'competition was doing fiscal year adjustment bond issues. Is that correct?

A Yes..

44.

Q Was that why you approached Mr. Gualluzzi one of the reasons why you approached him to be a consultant for your firm?

THE WITNESS: Because of -- I'm sorry.

MS. BROTBACKER: Because of the fiscal year adjustment bonds being done by other firms -A -- No, that was one -- that's one particular type of financing that was being done that we weren't t up to speed on and I mean that came out in financing as well as the County restructuring -- restructuring County debt, any other things that he might have that he might be knowledgeable that we're not up on in terms of the State of New Jersey.

Q What other issues did you believe that Mr. Gualluzzi could help A.G. Edwards on at the time you approached him about the business relationship?

A I -- whatever, I don't think there was anything specific, just whatever he might have knowledge of that we don't in terms of what counties can do. He was a county treasurer. He was active in county treasurer's associations and there may be things that we had been missing that we weren't aware of.

Q Was there any follow—up to this initial meeting?

A There were -- again, I don't recall exactly when they were, but there were conversations, yes, and I approached our people in my office who then approached St.

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Louis, our home office, and they said proceed with trying to put some kind of agreement together with Mr. Gualluzzi.

Q Who did you approach in your office?

A The initial approach was David Brownstein.

Q Uhat did you say to Mr. Brownstein at the initial a p pro a ch?

A David and I had al-ready talked about it. So David knew that I was going to approach Mr. Gualluzzi and he agreed that this would be a good thing -for us; that he could use his expertise and then he took it from the-re to St. Louis and discussed it with the people in St. Louis.

Q Did you tell Mr. Brownstein why you were approaching Mr. Gualluzzi about a business relationship?

A Again, we had discussed it together ourselves and it was a mutual understanding that it would be a good idea for us to approach Mr. Gualluzzi. I'm not sure, to tell you the truth, whether it was my original idea or David's original idea, but we both came up with the idea pretty much at the same time that this would be helpful if we had somebody like this that we could call upon.

Q In your discussions with Mr. Brownstein concerning approaching Mr. Gualluzzi, what did you say and what did he say?

A Basically, we think that hecould be a help to A.G. Edwards and he agreed. He has knowledge of the inter

workings of government in the State of New Jersey Which we don't have.. Counties are our biggest clients and he's, very active. He's the treasurer of the largest county in the State of New Jersey so that he could probably help us with, you know, with trying to come with ideas for county financing s.

Q Did you speak with anyone from St. Louis or was it Mr. Brownstein who spoke to the people there?

A It was both of us. David Brownstein was the major contact, but yes I spoke with —— I wasn't the initial contact. David was the initial contact with Jon Savage who's the fellow that we report to.

Q Did you have any contact with Mr. Savage?

A Yes.

Q What did you say to Mr. Savage concerning Mr. Gualluzzi?

A I told him who Mr. Gualluzzi was and his credentials and that I thought it might be a good idea to have somebody like this as a consultant that we could call upon in the State of New Jersey and elsewhere. for that matter in terms of helping us structure -financings.

Q Did you have any further discussions with Mr. Gualluzzi concerning what services he could provide to A.G. Edwards prior to the contract being executed?

A No.

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Q So just it was the initial discussion and the substance of that was the way that the agreement was intended to be?

MR. LOCHBIHLER:What you testified to in other words -A Well, the —— there was no discussion of an agreement. I had no discussion with him of an actual agreement. That came from between St. Louis and himself, but we talked strictly in generalities as to what his role would be.

Q And what generalities did you discuss?

A As a -- basically as a financial consultant to help in terms of basically county government authorities, municipalities that we're able to issue negotiated debt, anything in that area.

Q When you say that it was to help with county government authorities, specifically what type of help was Mr. Gualluzzi to supply A.G. Edwards?

A Well, he was familiar with county debt and I thought that he might be able to help us come up with ways and ideas to help finance county debt, such as the fiscal year adjustment bond. That was a technique and now all these derivative products were techniques to help counties and authorities and municipalities finance their debt. We were, quite frankly, weren't keeping up to speed. I believe

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that we weren't keeping up to speed on those. So we needed more input as to how to help us do that. -

Q Did there come a time that a contract was executed between Mr. Gualluzzi and A.G. Edwards?

A Yes.

Q What, if anything, was your involvement in the drafting of that contract?

A Very little.

Q What was your involvement inthe drafting of that contract?

A Just basically forwarding his comments to our people and forwarding our comments to him. I was kind of a go between there.

(Exhibit Number 6 was so marked for identification..)

MS. BROTBACKER Mr. McDonough, I'm handing you what just has been marked as Exhibit Number 6. It is a two page document.

Q Do you recognize Exhibit Number 6?

AYes..

Q What is Exhibit Number 6?

A It's a contract between Joe GualluZzi and A.G. Edwards.

Q Whose handwriting is on Exhibit Number 6?

THE WITNESS: The signatures or

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MS.. BROTBACKER: -- On the first page of Exhibit Number 6.

THE WITNESS: First page.

A I don't know whose handwriting that is

Q What, if anything, was your involvement in the change of $3,000.00 per month to $2,000.00 per month?

A I had no involvement in that.

Q Did you have any discussions with anyone concerning that topic?

A. I don't recall having discussions about that.

There may have been. I don't recall having specific discussions about that.

Q Referring to the first page of Exhibit Number 6 that has the handwriting by—— it states: "It is further understood that the fee for these services will be per year payable at the rate of $2,000.00 per month and billable in advance for each month." What is your understanding as to how it was determined that Mr. Gualluzzi would be put on a monthly retainer?

A I believe it was —— it was kind of the norm of the industry in terms of financial consultants to have some kind

of retainer, and I believe that that's -- -- I believe that's why we decided to -- it was decided to put him on a retainer

Q From where did you get your understanding that it

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was part of the norm of the industry to have consultants on a monthly retainer?

A I think my discussions with David Brownstein and a fellow's name on the back here, Dan Schaub Again I'm speculating but I think that's Dan Schaub's handwriting on the front page there, but in discussions with Dan Schaub and David Brownstein.

Q Did Mr. Gualluzzi request to be placed on a monthly retainer?

A Yes, he asked for a retainer.

Q The second sentence of that paragraph states: "and then a ten percent bonus will be paid based on net management fees collected by A. G.E. for issues to brought to A.G.E. by J.P.G. during the term of this agreement How did it come about that that provision was included in this contract?

A It's my understanding that that's in all A.G. Edwards consultant contracts.

Qand where did you get that understanding?

A From Mr. - Schaub or Mr. Brownstein

Q Was that intended to be a finder's fee?

A Yes, that's a finder's fee.

Q But what was your understanding as to what it meant "for issues brought to A.G.E. by. J.P.G."?

A My understanding is that any financing that he

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worked on and he added substance to that financing that he would be paid a finder's fee, but it would be after all the expenses were paid..

Q Was there —— did you have any unde- rstanding at the time that this contract was executed as to what type of work Mr. Gualluzzi would have to do in a transaction in order for him to receive the ten percent bonus?

A No.. -

Q Do you have an unde-rstanding as to whether it was any work he did on the transaction or did he have to do a certain amount of work?

A I think it's —— this contract is vague for purpose and that's really the purpose is that I don't if we can determine that or it could be determined.

Q Did you have any discussions with anyone where it decided to leave this contract vague for a purpose?

A No..

Q Did you have any discussions at the time this contract was executed as to who would be responsible for determining on what transactions Mr. Gualluzzi would receive a ten percent bonus?

A I think it was clearly the manager of the office would be —— would make that decision..

Q Who's the manager of the office?

A Brownstein was the manager of the office at this

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time.

Q - And why do you believe that it was clear that Mr Brownstein would make the decision as to when Mr. Gualluzzi would receive the ten percent bonus? -

A Because he handles all the technical day—to-- day work with regards to a financing and that either he or the lead banker would best be able to make that decision as to how much time and effort that a consultant brought to a financing. -

Q Were there any discussions on that topic or are you now speculating that —— A —— There was discussions on that topic.

Q Who were parties to that discussion?

A Again, I think it was David Brownste in, Dan Schaub, Jon Savage were parts of those discussions, not all at one time but at various times or various discussions.

Q And you're now referring to d iscussions where it was decided that Mr. Brownstein would decide when Mr.. Gualluzzi would receive the ten percent bonus?

A I don't know if that was actually stated that

way, but it was assumed that if he was the manager of the office he would make that decision.
Q It was- assumed by who?

A It was assumed by' St. Louis that that's the —— that he would be the one to make that decision.

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Q And how do you know it was assumed by St.. Louis that Mr. Brownstein would make the decision? -

A Only because he's the manager and St.. Louis or in the A.G. Edwards structure, the manager makes all the d e c is i on s.

Q What I'm driving at is that did anyone ever say Mr. Brownstein will be the one to determine that Mr.. Gualluzzi will or will not get a ten percent bonus on this transaction, or are you just speculating that that was the way St.. Louis was figuring it would work out?

A Let me understand the question

Q I'm trying to find cut whether there was any d iscussion as to who would make the decision whether on any particular transaction Mr Gualluzzi would receive a ten percent bonus?

MR. LOCHBIHLER:She's looking for your present recollection of a conversation at which that was discussed, that part -ular subject was discussed, as opposed to, you know, you thinking that something may have been discussed ——

THE WITNESS: —— Yeah..

MR. LOCHBIHLER: —— do you have a recollection?

A No, it was just —— a recollection of an actual discussion that that was — that that was the topic, I don't believe that there was one. -

- Q Did Mr. Gualluzzi provide any services to A.G.

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Edwards?

THE WITNESS: Did he?

MS. BROTBACKER: Yes.

A Yes.

Q What type of services did he provide?

A Welll he was consulted on financings. Again, I'm not privy to all the discussions he may have had with our people, but I know there was conversations and calls going back and forth between he and our bankers with regards to different financings or different financing techniques

Q Were any subsequent contracts -- were any contracts signed after the contract exhibited in number 6? Did the relationship continue beyond a year?

A Yes.

Q Did the nature of the relationship change at any time?

A No.

Q Were there any discussions about whether the relationship would change at any time?

A No.

(Exhibit Number 7 was so marked for identification.)

MS.. BROTBACKER: I'm handing you what has just been marked as Exhibit Number 7.

Q Turn to the second page of Exhibit Number 7 if

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you would and tell me whether you recognize this Exhibit.

A Yes.

Q How did it come about that this page of Exhibit 7 was created'?

A I believe A.G. Edwards was behind in paying his consultant fees for financings that he had worked on. You don't fees until the actual financing is closed and all the expenses are paid, and I think this was a -- as a result of questions from Mr. Gualluzzi as to where we -- where A.G. Edwards on these particular financings in terms of his consulting fee.

Q Did Mr. Gualluzzi direct his questions to you?

A Sometimes they were directed to me. Sometimes they were directed to David Brownstein.

Q What did Mr. Gualluzzi do for A.G. Edwards on the Mercer County Improvement Authority custodial receipts issue?

A I —— again I wouldn't -- I can't answer that question to any of these because I'm not -- I was not involved in the actual financing, the actual structuring of these financings. That was all the bankers that were involved in these.

Q What was your involvement on the Mercer County Improvement Authority custodial receipts bonding?

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THE WITNESS: My involvement?

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MS. BROTBACKER: Yes.

A Was attending the Mercer County Improvement Authority meetings.

Q What type of meetings did you attend?

A The regular authority, public authority meetings

Q Did you attend any other meetings besides - - don't recall attending any of the working session meetings on that. I may have, but I don't recall them.

Q Did anyone ever tell you what Mr. Gualluzzi did on this bond transaction?

A No, not to my recollection..

Q Then how did it come that the Mercer County Improvement Authority custodial receipts was listed in this memo?

A Because that was what was given to me.

Q By whom?

A David Brownstein.

Q What did he give to you?

A He would give to me the financings that Soe Gualluzzi worked on and the amounts that he was entitled to.

Q Did Mr. Brownstein ever tell you what Mr. Gualluzzi did on this bond transaction?

A No, not -- again 'there may have been discussions.

This is going back, we're talking about a lot of financings,

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but it would -- again I did not get involved in any of the technical aspect of these financings-- --

MS. BROTBACKER:-- I want to keep you specifically now to the Mercer -

THE WITNESS: —— Mercer County.

MS. BROTBACKER:-- Improvement Authority.

A -- To the best of my recollection, there was never any discussion as to what Joe Gualluzzi did an that financing -

Q How did you know how much to charge Mr. Gualluzzi? Did Mr. Brownstein tell you orally? Did he put it on a piece of paper?

A I'm sure it was on a piece of paper.

Q Was it a memo he wrote or did he just write on a piece of paper the amount?

A I don't believe it was a memo. It's small office. It: was probably put on a piece of paper and given to me.

Q Did you ever hear from anyone of anything Mr. Gualluzzi did on the Mercer County Improvement Authority issue

A No.

Q What is your understanding of what Mr. Gualluzzi did on the West New York Municipal Utilities Authority issue?

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A It's going to the same thing. I'm not I don't have any -- again I was not involved, in any of the technical sessions of any of these financings. So I can only assume that he was involved in some way because we had paid him a consulting fee on those.

Q How did it come about that that transaction was listed in this memo to Mr. Gualluzzi?

A Because it was given to me.

Q By whom?

A By David Brownstein.

QHow was it given to you'?

A It was either given to me orally or written down. I don't recall

Q Did you ever hear from anyone what Mr. Gualluzzi had done on this bond transaction?

A No.

Q What about the County of Kent bond anticipation notes, how did Mr. Gualluzzi -receive money on that transact ion?

A Again, because he was -- must have performed some kind of financial advisory service and I was given that particular amount on that particular financing.

Q From whom?

A From David Brownstein.

Q Was it on a piece of paper or orally?

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A It could have been either. one.

Q Did you ever hear from anyone what Mr. Gualluzzi did on this bond issue? -

A Again, not specifically. I had assumed that he was providing some kind of service, and my recollection right here and now whether somebody said Mr. Gualluzzi did this or did that, I can't say that. I can't say that anybody did that.

Q Why are these numbers -- strike that. Do you have any understanding as to how these numbers came to be, how Mr. Brownstein came to these figures?

A I assume they were ten percent of the net management lees. That' what I would assume that's where they're coming from.

(Exhibit Number 8 was so marked for identification.)

MS. BROTBACKER: Mr. McDonough, I'm handing you what's just been marked as Exhibit Number 8 It's a two page document.

Q Do you recognize Exhibit Number 8?

A Yeah, I -recognize the memo sent to. me from Mr. Gualluzzi.

Q What was your understanding as to what Mr. Gualluzzi meant by the word "help repair" on the first page of Exhibit Number 8?

A Again, I think we were behind in our payments to him and I think in his estimation of financings that he had worked on and that he -- he was looking for me to help get him paid.

Q Prior to Mr. Gualluzzi sending you Exhibit Number 8, did he tell you that it was on its way?

A He may have.

Q Do you have a recollection as to whether he did or not?

A No, I don't have a recollection of that.

Q Do you recall receiving Exhibit Number 8?

A Yes.

Q What did you do after receiving Exhibit Number 8 in response to it?

A I gave it to David Brownstein and told him that, you know, we're to respond to his request why hasn't he been paid. If he's due certain amounts, then why hasn't he been paid.

Q And what, if anything, did Mr. Brownstein say in response to that?

A I don't know exactly what he said, but I'm sure he said I will handle it, take care of it.

Q Is there anything about Exhibit 8 that you didn't understand at the time you received it? My question is do you recall being puzzled by Exhibit 8--

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A-- Yes, yeah.

Q Why were you puzzled by it?

A The balance figure.

Q And what was puzzling about that figure to you?

A Just I'm not sure what what that meant, where that was coming from.

Q Did you ask Mr. Gualluzzi what that meant?

A Yeah, and I believe at the time he said that this was when he signed the contract with us, this is what he believed that his services were going to be worth and I think that's what his comment was to me. I'm not I don't recall but it was at that time I turned over to Mr. Brownstein and asked him to follow—up on it.

Q At the time that you received Exhibit 8, did you ask Mr. Gualluzzi what he meant by that?

A Yes, and he's the one —— my recollection of the conversation was that he said this is the, you know, the overall contract that we had -- we had agreed upon would be the -- this is what I would be entitled to.

Q At the time that you -- that Mr. Gualluzzi executed the contract with A.G. Edwards, had he talked to you about his goal?

A No.

MR. LOCHBIHLER: What do you mean by "goal"?

Q Sixty thousand dollars that he expected to

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receive, did you have a discussion with him at the time -

A——No.

Q Did Mr. Gualluzzi ever act as a finder on any transactions for A.G. Edwards?

A Yes.

Q What transactions

A The transactions that appear on this page he was a finder or -- how do you determine -- define finder versus lending some technical support. I can't tell you which he did. He just did the financing, but ——

MR. LOCHBIHLER: -- You're referring to the first page of Exhibit 7 center -

Q -- What is your understanding of the phrase "finder's"?

A My understanding of the term finder is that the person that contributes anything to a financing, whether it's something that he brings to us that we didn't know about prior to him bringing it to us or whether that iridividual actually worked on the financing and is compensated for that. I think A.G. Edwards has the same thing, groups goes into the one -- the term finder. I don't think -- I think that's kind of -- we go one and hand in hand.

Q . Do you have any specific knowledge as to anything Mr. Gualluzzi did in any transaction on behalf of A.G.

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Edwards?

I know there were a lot of calls going back and. forth between our bankers and Mr. Gualluzzi.

Q How do you know that?

A Because I've been in the office when the calls were coming in.

Q What bankers did Mr. Gualluzzi have contact with?

A Basically with David Brownstein..

Q Who else?

A Well, David was the one that mainly handled Essex County. So I think it was probably mostly David and we had two other bankers that are no longer with us, Nina Johnsrude and Bettina Brommas that he may have had some contact with because they also worked on Essex County financings

Q Was Mr. Gualluzzi solely-helping A.G. Edwards out on Essex County financings?

A No, he was involved in I don't believe in any Essex County financings.

Q Well then why was his main contact with Mr. Brownstein as opposed to somebody -

A —— I meant New Jersey. I'm sorry I meant New Jersey financings.

Q Other than Mr. Brownstein, do you have any knowledge of Mr. Gualluzzi having contact with anyone else from A.G. Edwards on any bond transactions for which he was

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paid?

A No, I don't, other than the two names that I gave you. Bettina Brommas and Nina Johnsrude also worked on New Jersey financings.

Q Do you have any knowledge that Mr. Gualluzzi had contact with either Bettina Brommas or -

A -- I don't have direct knowledge of that, no.

Q Do you have any indirect knowledge of that?

A No, I'm assuming that. That's all.

Q Did you ever see Mr. Gualluzzi at A.G. Edwards' offices working on any bond transaction?

Q Yes.

Q Which ones?

A I don't recall.

Q With whom did he work?

A David Brownstein.

Q Anyone else?

A That's all that can remember.

MS. BROTBACKER: I'm going to go off the record.

(Whereupon, a recess was taken.)

MS. BROTBACKER: Back on the record.

Mr. McDonough, while we were off the record, did you have any conversations of a substantive nature with any members of the Commission's Staff?

THE WITNESS: No.

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Q Do you have any understanding as to whether A.G. Edwards ever paid Mr. Gualluzzi any money in connection with any Essex County Improvement Authority or Essex County bond issue?

A No.

MS. BROTBACKER: I have no further questions at this time. It may be necessary to speak with you again. If so, I'll contact your counsel.

Do you have anything that you'd like to add or clarify for the record?

THE WITNESS: I don't think so.

MS. BROTBACKER: Counsel?

MR. LOCHBIHLER: No, I think -- I think we're all set.

MS. BROTBACKER: We've off the record at 12:15.

(Whereupon, the record was closed at 12: 15 p.m.)

(3)
Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

In the

Supreme Court of the United States

JOSEPH P. GALLUZZI,

Petitioner,

v

UNITED STATES OF AMERICA,

Respondents,

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

APPENDIX VOLUME II (PP. 285-END)

Dennis A. Durkin
Counsel of Record
David D.F. Lawrence
Christopher D. Adams
1120 Bloomfield Avenue
West Caldwell, NJ 07007
(973) 244-9969
Attorneys for Petitioner
Joseph P. Galluzzi

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

USA

v.

JOSEPH P. GALLUZZI

CRIMINAL NO. 96-640

NOTICE OF APPEAL

Notice is hereby given that Joseph P. Galluzzi, defendant above named, hereby appeals to the United States Court of Appeals for the Third Circuit from the conviction and sentence entered in this action on September 10, 1998 by the Honorable William H. 'Walls, United States District Court Judge.

Date 9/15/88

US DISTRICT COURT
DISTRICT OF NEW JERSEY

USA

V

JOSEPH P. GALLUZZI

HON WILLIAM H. WALLS

CRIMINAL NO. 96-640

TITLE 18, US CODE SECTIONS 371, 666, 1341, 1343 AND 1952

SUPERCEDING INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Newark, charges:

Count 1-11

Scheme and Artifice to Defraud

Defendant and Entities

1. At times relevant to this Indictment:

a. Defendant Jsoeph P. Galluzzi was the fincnacial consultant to the Essex County Board of Chosen Freeholders between about 1982 and 1987. Between about 1987 and about July

1989, defendant was Treasurer of Essex County and Acting Director of Administration and FInance. In about August 1989, defendant became the financial consultant to Essex County at an annual fees of $125,000 and retained that position until about December 1990. As Essex County Treasurer and Director of Administratrion and Financial matters and recommendations for Essex County and (ii) was the chief financial advisor and decision maker on all financial matters for Essex County. His dueties remained the same when he bacame a financial consultant to Essex County in about.

b. Between about 1987 and about June 1992 defendant JOSEPH P. GALLUZZI also was the budget consultant to the Municipal Council of the Township of Irvington and financial consultant for Irvington's fiscal year adjustment financing. Defendant JOSEPH P. GALLUZZI's duties as budget consultant and financial consultant included analyzing, reviewing and performing advisory work with respect to bond issues and acting as the Municipal Council*s representative on bond-related questions.

c. Defendant JOSEPH GALLUZZI also was a certified public accountant and registered municipal accountant and owned and operated an accounting practice, Joseph p. Galluzzi, in Irvington and then South Orange, New Jersey.

d. Essex County is a county in the State of Jersey comprised of 22 municipalities. Essex County*s executive branch 'was headed by a county executive who, among other things, signed contracts, bonds and other instruments requiring the County*s consent. The Essex County legislative branch was the Essex County Board

of Chosen Freeholders which had the power to adopt ordinances and resolutions, including those concerning bond issues. Essex County. was the recipient each year of over $10,000 in federal funds. Essex County issued $23.9 million in general obligation. bonds in 1987; $49 million* in general obliqation* bonds in January 1989; $104 million in general obligation refunding bonds in June 1989, and $62.5 million in fiscal year adjustment bonds in 1991.

e. Irvington was a Township in Essex County governed by a mayor and. Municipal Council. The Municipal Council had the power to adopt ordinances and. resolution including those concerning bond. issues. The Municipal Council also selected underwriters in, connection with such bond issues. Irvington was the recipient each year of over $10,000 in federal.funds. Irvington issued approximately $25 million in fiscal year adjustment bonds in. about February 1992.

f. The-Essex County Improvement Authority ("ECIA") was an independent county agency that periodically issued municipal bonds far the benefit of Essex County or Essex County municipalities. The ECIA issued $65 million in lease revenue bonds for the benefit of Essex County in 1990 and issued. about $49 million in. bonds for the benefit of the Irvington Board of Education* in 1992. .

g First Fidelity Securities Group with offices in Newark, New Jersey, was a department of First Fidelity Bank N A. ("First Fidelity") and was a municipal securities dealer registered with the Securities and Exchange Commission ("SEC"). First Fidelity acted as underwriter. on municipal bond issues for Essex County, the ECIA, and Essex County municipalities. That is, as underwriter, First Fidelity agreed to purchase the bonds issued by the county or other public entity and then. resell the bonds to investors. First Fidelity was a financial institution insured by the Federal Deposit Insurance Corporation.

h. A.G. Edwards & Sons, Inc. ("A.G. Edwards") with offices in Newark, New Jersey, was a broker dealer registered with the SEC. A.G. Edwards acted as underwriter on municipal bond issues for ESsex County, the ECIA, and Essex County muncipalities. Between about January 1991 and December 1993, A G Edwards had. a contractual. relationship with defendant JOSEPH P. GALLUZZI, whereby defendant JOSEPH P. GALLUZZI was paid for purportedly providing* certain consulting and finders fee services to A.G. Edwards.

i Ehrlich Bober & Co., Inc. ("Ehrlich Bober") with offices in New York, New York was a broker dealer registered with the S.E:C. Allegations set forth below relating to A.G. Edwards and an A.G. Edwards vice president include Ehrlich Bober because the A. C. Edwards vice president moved from Ehrlich Bober to A.G. Edwards in about March 1990.

j. Pacific Matrix Financial Group ("Pacific Matrix") with offices in Exton, Pennsylvania and Sherman Oaks, California, was an investment firm engaged in, among other,.things, the reinvestment of municipal bond proceeds. Pacific Matrix often acted as a "GIC" broker by arranging the reinvestment of such bond proceeds, in what was referred to as a, gauranteed investment contract or "gic."

k. AIG Matched Funding ("AIG"), with offices in York, New York, was a subsidiary of AIG Insurance Co. and was a firm in which municipal bond proceeds were reinvested. AIG, in , paid interest on the investment and was commonly referred to as a "provider."

L. The Camden County Municipal utilities Authority ("CCMUA") was an independent public authority engaged in acquiring, constructing, maintaining and operating sewage facilities in Camden County, New Jersey.

m. Ferraioli, Wesdyk and Cuva, ("Ferraioli") a certified public accounting firm with offices in Pompton Lakes, New Jersey, was engaged in, among other things, the highly specialized field of. verification. regarding municipal bond offerings. Verification involved confirming important mathematical computations regarding municipal bond offerings. including the "yield" or interest paid on the bonds.

n. Essex County Attorney No. 1 was an attorney whose identity is known to the grand jury who practices in the County of Essex.

2. From in or about 1989 through in or about 1995, in the District of New Jersey and elsewhere, the defendant JOSEPH P.. GALLUZZI knowingly and willfully devised and intended to devise a scheme and artifice to defraud and for obtaining money and, property by means of false and fraudulent pretenses, representations, and promises, namely a scheme, to defraud Essex Count , the Township of Irvington, and First Fidelity of money and property and to deprive the citizens of Essex County and the Township of Irvington and First Fidelity of the . right of honest services, which scheme and artifice to defraud affected a financial institution and is in substance set forth below.

3. The object of this scheme and artifice to defraud was to obtain money and other things of value for of defendant JOSEPH P. . GALLUZZI and others without the public*s knowledge. .

4. It was part of the scheme and artifice to defraud that from about 1989 and continuing through about 1993, defendant JOSEPH P. GALLUZZI caused a First Fidelity vice president to agree to pay kickbacks to. defendant in connection with and as a reward for defendant*s efforts in his official capacity in directing Essex County and Irvington municipal bond underwriting business to First Fidelity.

5. It was a further part of the scheme and artifice to defraud that defendant JOSEPH P. GALLUZZI and the First Fidelity vice president agreed to. a formula for - the kickback amounts, relating to the value of the bond offerings.

6. It was a further part of the scheme and artifice to defraud that. in about 1989 defendant JOSEPH P. GALLUZZI recommended the Essex County $1.04 million refunding bond issue even though the First Fidelity vice president, advised him it lacked financial merit.

7. It was a further part of the .scheme and artifice to defraud that to disguise the kickbacks, defendant JOSEPH P. GALLUZZI prepared invoices on his firm letterhead falsely representing that he had, performed band-related work for First Fidelity, Pacific Matrix, AIG, the CCMUA, and Ferraioli, when fact he had not.

8. It was a further part of the scheme and artifice to defraud that between about 1989 and about 1993, defendant JOSEPH P. GALLUZZI obtained from the First Fidelity vice president approximately $140,000 in kickbacks through the submission of the above described phony invoices.

9. It was a further part of the scheme and artifice to defraud that in or about June 19891 defendant JOSEPH p. GALLUZZI directed the First Fidelity vice president to make a $25,000 payment to Essex County Attorney No. 1, purportedly for services Essex County Attorney No. 1 performed on a 1989 bond issue despite the fact that this attorney performed no meaningful services on the bond issue.

10. It was a further part of the scheme and artifice to defraud that defendant JOSEPH P. GALLUZZI concealed the scheme by, among other things: .

(a) making false statements to the Essex County Board of Chosen Freeholders about his relationship with First. Fidelity Bank. . ;.

(b) sending securities-related documents to Essex County Attorney No. 1 to make it appear thai said attorney had performed meaningful services on the bond issue for which he was paid, when in fact he had not.

(c)attempting to influence the First Fidelity vice president to give false information to and

withhold true information from law enforcement officers.

11. On or about the dates set forth below in the District of New Jersey and elsewhere, the defendant JOSEPH P. GALLUZZI for the purpose of executing this scheme and artifice to defraud did cause to he sent by U. S. mail or transmitted by means of wire, writings, signals and sounds in interstate commerce as follows:

Count	Approximate Date	Subject Matter
Transmitted -		
1 Mail	1/89	Galluzzi invoice for $5,710 re: Kearny MUA
2 Mail	1/89	Galluzzi invoice . for $6,195 re: Randolph MUA
3 Mail	2/90	Galluzzi letter confirming verification
4 Mail*	2/90	. Galluzzi invoice for $11,000 to Ferraicli
5 Mail	3/90	. Galluzzi invoice for $4,000 re. West New York MUA

6		5/9	Galluzzi invoice for $23,685 re: Camden County MUA	Mail
		8/90	Pacific Matrix check for $8,425.50 to Galluzzi	Mail

	Approximate Date	Subject Matter	Transmitted
8	10/90-	Pacific Matrix check for $11,166.66 to Galluzzi	Mail
9	2/91	Galluzzi invoice for $40,000 to AIG	Wire
10	10/91	Pacific Matrix employee check for $6,000 to Galluzzi	Mail
11	8/92	Pacific Matrix check for $25,000 to Galluzzi	.Mail

In violation of Title is; United States Code, Sections 1341, 1343, 1346 and 2. · .

COUNTS 12-15

Scheme and Artifice to Defraud

1. Paragraph 1 of Count 1 is hereby realleged and incorporated herein.

2. From in or about 1985 through in or about 1987, in the District of New Jersey and elsewhere, the defendant JOSEPH P. GALLUZZI knowingly and willfully devised and intended to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, namely a scheme to defraud Essex County and First Fidelity of money and property which scheme and artifice to defraud affected a financial institution and is in substance set forth below.

3. The object of this scheme and artifice to defraud was to obtain money and other things of value for the benefit of defendant JOSEPH P GALLUZZI. and others without the public's knowledge. . .

4. It was part of the. scheme and artifice to defraud that in or about 1987 defendant JOSEPH P. GALLUZZI caused a First Fidelity vice president to agree to pay kickbacks to defendant in connection with. and as a reward for defendant's efforts in his official capacity in directing Essex County municipal bond underwriting business to First Fidelity.

It was a further part of the scheme arid artifice to defraud that defendant JOSEPH P. GALLUZZI and the First Fidelity vice president agreed to a formula for the kickback amounts relating to the value of the bond offerings.

6. It was a further part of the scheme and artifice to defraud that to disguise the kickbacks, defendant JOSEPH P. GALLUZZI prepared invoices, on his firm letterhead falsely representing that he had performed bond-related work for First

Fidelity, when in fact he had not

7. It was a.further part of the scheme and artifice to defraud that in about 1987 defendant JOSEPH P. GALLUZZI obtained from the First Fidelity vice president approximately $30,000 in kickbacks through the submission of the above described phony invoices. .

8. On or about the dates sat forth below in the District of New Jersey and elsewhere, the defendant JOSEPH P. GALLUZZI for the purpose of executing this scheme and artifice to defraud did cause to be sent by U.S. mail as follows:

Count	Approximate Date	Subject Matter
12	3/87	Galluzzi invoice for $10,000 re: Atlantic County
13	4/87	Galluzzi invoice, for $8,719

re: Gloucester County

Count	Approximate Date	Subject Matter
14	8/87	

Galluzzi invoice

for $7,500 .

re: Lower Township

Count	Approximate Date	Subject Matter
15	8/87	

Galluzzi invoice

for $5,112.50

re: Wanaque

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 16

Scheme and Artifice to Defraud

1. Paragraph 1 of Count 1 is hereby realleged and incorporated herein,

2. Essex County Attorney No. 2 was an attorney whose identity is known to the grand jury who practices in the Countty of Essex.

3. From in or about January 13 90 through in or about 1995, in the District of New Jersey, and elsewhere, the defendant

JOSEPH P. GALLUZZI

knowingly and willfully devised arid intended to devise, a scheme and artifices to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, namely, a scheme to defraud Essex County and A.G. Edwards and to deprive the citizens of Essex County and AG, V Edwards of defendant JOSEPH P. GALLUZZI'S honest services, which scheme and artifice is in substance set forth below.

4. The object of. this scheme arid artifice to defraud was to obtain money and other things of value of or the benefit of defendant JOSEPH P. GALLUZZI and others without the public's knowledge.

5. It was a part of the scheme and artifice to. defraud that beginning in about January 1990 and continuing through about 1993, defendant JOSEPH P. GALLUZZI caused an A. G. Edwards Vice President to agree to pay kickbacks to defendant in connection with and as a reward far defendant's efforts in his official capacity to direct Essex County municipal bond underwriting business to A . G. Edwards.

6. It was a further part of the scheme and artifice to defraud that. in or about January 1991 defendant JOSEPH p. GALLUZZI and the A.G. Edwards Vice President prepared a contract for defendant JOSEPH P. GALLUZZI to become a consultant to A.G. Edwards, purportedly to assist A.G.

Edwards in finding new bond business. The contract provided for payment to defendant JOSEPH P.GALLUZZI of a $2, 000 per month retainer plus 10% of A. G. Edwards's net management fees on bond deals defendant brought to A.G. Edwards.

7. It was a further part of the scheme and artifice to defraud that to disguise the kickbacks, defendant JOSEPH P. GALLUZZI and the AG. Edwards Vice President caused to be prepared phony invoices on JOSEPH P. GALLUZZI letterhead representing that he had performed the. contractual finder services for A.G. Edwards when in-fact he had not.

8. It wasa further part of the scheme and artifice to defraud that between about 1990 and about 1993, defendant JOSEPH GALLUZZI obtained approximately '$67,000 in retainer payments plus approximately $15, 000 in payments through the submission of. the above described phony invoices.

9. It was a further part of the scheme and artifice to. defraud that defendant JOSEPH GAIJLUZZI caused and attempted to cause Essex County, A. G. Edwards, and municipal bond counsel to pay bond issue-related fees to certain attorneys despite the fact that these attorneys performed no meaningful services on the municipal bond issues:

(a) in or about February 1990, defendant JOSEPH P. GALLUZZI without authority or justification caused a $40,000 fee for an unspecified underwriter's counsel to be inserted into an official schedule of bond related fees;

(b) in or about August 1990, defendant JOSEPH p. GALLUZZI attempted to cause bond counsel to make two $5,000 - 10,000 payments to Essex County Attorney No. 2 and an unidentified attorney; and V

(c) in or about November 1990, defendant JOSEPH P. GALLUZZI caused A.G Edwards to make a $20,000 payment to Essex County Attorney No. 2.

10. In or about June 1992, in the District of New Jersey, and elsewhere, the defendant

JOSEPH P. GALLUZZI

for the purpose of executing this scheme and artifice to defraud did cause to be transmitted by means of wire, wrltings, signals arid sounds in interstate commerce, a consulting contract and invoices.

In violation. of Title 18, United States Code, Section 1343, 1346 and 2.

COUNTS 17-21

1. Paragraphs 1 and 4 through 10 of Count 1 and paragraphs 2 and 5 through 9 of Count 16 are hereby realleged and incorporated herein.

2. From in or about 1985 through in or about
3, in Essex county, in the District of New Jersey, and elsewhere,
endant JOSEPH P. GALLUZZI did knowingly and willfully and
ruptly solicit and demand for his own benefit, and accept and agree to
ept money intending to be influenced and rewarded in connection with a

business, transaction and series of transactions of a local governrae.nt and a local government agency involving anything of value of. $5,000 or more.

Count	Approximate Date	Approximate Amount of Kickback	Matter Government Entity
17	10/21/91	V '$6,000.00	1989 Essex County Irvington Bond Deals
18	1/30/92	$4,737.25	1990 Essex County Bond Deal
19	4/15/92	$ 945.82	1990 Essex County Bond Deal
20	7/30/92	V $3,067.75	1990 Essex County Bond Deal
21	8/4/92	$25,000.00	1992 Ixvington Bond Deal

In violation, of Title 18, United States Code, Section 666 and 2.

COUNTS 22-26 V

Use of Facility in Interstate
Commerce - Illegal Benefit to a Public Servant

1. Paragraphs 1 and 4 through 10 of Count 1 and paragraphs 2 and S through 9 of Count 16 are realleged and incorporated herein.

2. From in or about 1985 until at least 1993, in the District of New Jersey, and elsewhere, the defendant JOSEPH P. GALLUZZI knowingly and willfully did. use and cause to be used the U.S. Mail and facilities in interstate commerce with the intent, to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on. of an. unlawful activity - namely soliciting, accepting and. agreeing to accept benefits as compensation for having, as a public servant given a decision, opinion and recommendation favorable to another and for having otherwise exercised a discretion in favor of another contrary. to N.J. Stat. Ann. S 2C: 27-4. -- and thereafter performed and attempted to perform an act to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of the unlawful activity, as

Count 22 - Interstate Facility- Use of the U.S. Mails and facilities in interstate commerce to send a Joseph P. Galluzzi invoice to Pacific matrix on about September 19, 1991 and to send a check from Pacific Matrix to defendant Jnoseph P. Galluzzi on or about October 21, 1991

Subsequent Acts-(a) defendant Joseph P. Galluzzi accepting a check for $6,000 about 10/23/91 (b) defendant Joseph P.

Galluzzi depositing that check into his bank account on or about October 23, 1991

Count 23 - Use of facilities in interstate commerce to send a defendant Joseph P. Galluzzi invoice to A.G> Edwards on or about January 30, 1992 and to send a check from A.G. Edwards to defendant Joseph P. Galluzzi on or about 1/30/92

Subsequent Acts (a) defendant Joseph P. Galluzzi accepting a check for $4,737.25 on or about January 30, 1992 (b) defendant Joseph P. Galluzzi depositing that check into his business account on or about 1/30/92 (b) defendant Joseph P. Galluzzi faxaing to A.G> Edwards , on or about 2/24/92, a balance sheet showing the remaining balance on the $60,000 kickback he was owed.

Count 24 - Use of facilities in interstate commerce to send a defendant Joseph P. Galluzzi invoice to A.G. Edwards on or about April 15, 1992 and to send a check from A.G. Edwards to defendant Joseph P. Galluzzio on or about 4/15/92

Subsequent Acts (a) defendant Joseph P. Galluzzi accepting a check for $945.82 on or about 4/15/92 (b) defendant Joseph P. Galluzzi depositing a check for $945.82 into his business account on or about 4/15/92.

Count 25 Use of facilities in interstate commerce to transmit a contract and invocies to A.G. Edwards in or about June 1992.

Subsequent Acts (a) defendant Joseph P. Galluzzi accepting a check for $3067.75 on or about 7/30/92 (b) defendant Joseph P. Galluzzi depositing a check for $3067.75 on or about 7/30/92

Count 26 Use of the U.S. Mails amd facilities in interstae commerce to send a Joseph P. Galluzzi invoice to Pacific Matrix on or about August 4, 1992 and to send a check from Pacific Matrix to Joseph P. Galluzi on or about August 18, 1992

Subsequent Acts (a) defendant Joseph P. Galluzzi accepting a check for $25,000 on or about 8/92 (b) defendant Joseph P. Galluzzi depositing a check for $25,000 on or about 8/92

In violation of Title 18, US Code, Sections 1952 and 2.